



ACHP's Policy Statement on Indigenous Knowledge and Historic Preservation: Summary of Comments and Coordination

Following extensive outreach and collaboration, including government-to-government consultation with Indian Tribes, the Advisory Council on Historic Preservation (ACHP) has developed a Policy Statement on Indigenous Knowledge and Historic Preservation that includes 12 core principles designed to further inform how Indigenous Knowledge should be accounted for in the field of historic preservation, including the Section 106 process.

A vital component includes the ACHP's position that Indigenous Knowledge is a valid and self-supporting source of information capable of informing federal agency decisions related to historic preservation. The policy statement includes a principle, with four subcomponents, which addresses each step of the Section 106 process and the role that Indigenous Knowledge has in it. Additionally, the ACHP recognizes the designated representatives of Indian Tribes and Native Hawaiian organizations as the appropriate personnel to advise on the identification, documentation, evaluation, assessment, and resolution of adverse effects related to historic properties of religious and cultural significance to them. The policy also seeks to inform federal agency action related to handling and disclosure of sensitive information, compensation, consultation timelines, and sacred sites, among other considerations.

The policy includes a preamble intended to establish baseline of understanding, an authority section that outlines the ACHP's statutory authority to issue this policy statement, and a discussion on the trust responsibility the ACHP has to Indian Tribes. The policy also includes a section that identifies how the ACHP will implement the policy including through training of ACHP staff, development of guidance and informational resources, development of template language related to agreement documents and program alternatives, providing technical assistance, continuing ongoing outreach and coordination with the preservation community, and by coordinating with the White House Council on Native American Affairs and the National Science and Technology Council's Subcommittee on Indigenous Knowledge.

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:

Engagement with Indian Tribes and Native Hawaiians

- Spring 2023 – 4 engagement sessions to develop the proposal.
- Summer 2023 – 2 engagement sessions to review draft outline.
- Fall 2023 – 2 engagement sessions to review the draft policy.
- Winter 2023/2024 – Consultation with Indian Tribes and Native Hawaiians
- Ongoing – Multiple individual meetings/consultations with THPOs, Tribal Leaders, and Tribal staff on the draft policy

Coordination with federal and state partners

- January 2023 to present – Presentation/discussion at ACHP Business and Tribal and Indigenous Peoples committee meetings.
- Summer 2023 – Presentation/discussion with FPOs and other cultural and resources personnel
- Winter 2023 – 2 presentations/discussions with FPOs and other cultural and resources personnel
- Winter 2023/2024 – Engagement session with State Historic Preservation Officers
- Fall 2023 – White House Tribal Nations Summit Accomplishments Report
- Recurring – Collaboration with the White House Council on Native American Affairs
- Recurring – Collaboration with the National Science and Technology Council’s Indigenous Knowledge Subcommittee
- Ongoing – Multiple meetings with agency leadership, legal offices, and policy staff.

Conferences and other outreach activities (select examples)

- Public webpage - [Indigenous Knowledge and Historic Preservation](#)
- Presentation/discussion at the 22nd United Nations Permanent Forum on Indigenous Issues (UN PFII) in New York, NY
- Presentation/discussion at the 2023 Southeast SHPO/THPO Meeting (hosted by NCSHPO, NATHPO, NPS, and the Tennessee Historical Commission) in Nashville, TN
- Presentation/discussion at the 2023 National Association of Tribal Historic Preservation Officer’s annual conference on the Cherokee Indian Reservation in Cherokee, NC
- Presentation/discussion (virtual) at the 2023 CalTHPO/SHPO conference hosted by the Pala Band of Mission Indians
- Presentation/discussion at the Fall 2023 National Congress of American Indians Annual Convention and Marketplace in New Orleans, LA

Summary of ACHP Member Feedback

ACHP members and leadership broadly supported the development of a policy that further informs the role Indigenous Knowledge has in historic preservation. They 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. ACHP staff was directed to conduct robust outreach and engagement 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.
- Characterizing what Indigenous Knowledge is for the purposes of Section 106.
- Address the role Indigenous Knowledge can have in all 4-steps of the Section 106 process.
- Ensuring the policy could be applied broadly by federal agencies, local and state governments, contractors, and other non-governmental institutions.
- Confirming that Indigenous Knowledge can be seen as a valid and self-supporting source of information in the Section 106 process.
- Account for historic preservation concerns in addition to Section 106 (i.e., Executive

Order 13007, Environmental Justice, etc).

- Include language recognizing ACHP’s support of the United Nations Declaration on the Rights of Indigenous Peoples.
- Inform potential updates to the Secretary of Interior’s Professional Qualification Standards.
- Recognize that Indian Tribes, Native Hawaiians, and other Indigenous Peoples are experts and should be seen as the appropriate source to inform federal agency decision-making related to properties that may be of religious and cultural significance.
- Accounting for Indigenous Knowledge as sensitive information.

Summary of Comments on Draft Policy Statement

Indian Tribes, Native Hawaiians, SHPOs, THPOs, federal agencies, and nongovernmental organizations all support the ACHP’s efforts to establish a set of principles and guidelines meant to inform the integration and application of Indigenous Knowledge in historic preservation and the Section 106 process. Most commenters requested that the ACHP clarify Indigenous Knowledge as valid and self-supporting, and that this information is frequently confidential or sensitive in nature. Commentors requested that the policy advance the role Indigenous Knowledge has in all four steps of the Section 106 process and reinforce the need to include Indigenous Knowledge in all four steps of the Section 106 process and not just when the regulations reference “special expertise.”

Commentors asked that the policy speak to the role Indigenous Knowledge has in the consideration of sacred sites and recommended language clarifying that the Section 106 process was not always an appropriate mechanism to account for sacred sites. Commenters requested the Tribal and Native Hawaiian representatives be recognized for the expertise, knowledge, and experience they hold unique to Indigenous Knowledge and that this expertise be compensated accordingly. Additional comments addressed respect and relationship building, the United Nations Declaration on the Rights of Indigenous People, the National Register, environmental justice, and the need for ongoing training.

Other Indigenous Peoples. Several commenters noted confusion as to why Indian Tribes were accounted for separately from the term “other Indigenous Peoples.” In response, the ACHP added a footnote to clarify that the distinction of Indian Tribes as separate from other Indigenous Peoples specific to the application of this policy. This decision reflects the fact that Indian Tribes, as a political entity, have a legal status under federal law reflective of the fact that they have retained various authorities consistent with their sovereign status. As such, many statutes, executive orders, regulations, and policies must address Indian Tribes in a manner consistent with that status.

Indigenous Knowledge. Participants supported the ACHP not defining what Indigenous Knowledge is. Rather, consistent with ACHP’s long standing practice, the ACHP only provided a description of what Indigenous knowledge could be. To establish consistency across the federal family, the ACHP referenced a recent description of Indigenous knowledge associated with the 2022 Guidance for Federal Departments and Agencies on Indigenous Knowledge. The ACHP also further clarified that Indigenous knowledge is the information held by Indian Tribes and native Hawaiian organizations and other Indigenous peoples used to inform historic preservation related federal decision making.

Additionally, commentors shared their preferences about specific terminology. Most respondents preferred the phrase Indigenous Knowledge to Traditional Knowledge noting that the term “traditional” it is often used to restrict a Tribe or NHO’s ability to continue to grow and develop and to pass on knowledge from generation-to-generation.

Outreach and coordination. Participants overwhelmingly supported the extensive outreach and consultation efforts conducted by the ACHP to inform the development of this policy. Indigenous

commenters noted that the ACHP facilitated outreach throughout all four seasons to ensure that any knowledge that may have limitations and how it is shared, timing of when this knowledge can be communicated, or availability of knowledge holders, was represented. Commenters supported ACHP's efforts to conduct national, regional, and one-on-one interactions and efforts to host listening and engagement sessions in the evening, on the weekends, and at other times more appropriate to Alaska, Hawaii, and other people in the Pacific islands. A limited number of commenters wanted an extension beyond the 12-month consultation period. However, most commenters wanted ACHP to act on adopting this policy as soon as possible.

Agency Authority. Throughout development of the policy commenters noted that it was appropriate and necessary for the ACHP to issue a policy statement that address the role Indigenous Knowledge as in historic preservation. Consistent with ACHP's statutory authority, participants wanted this policy to address not only section 106 and section 110 of the National Historic Preservation Act, but also Executive Order 13007: Indian Sacred Sites, the United Nations Declaration on the Rights of Indigenous Peoples, and other protocols and processes that intersect with historic preservation.

A couple comments requested that the ACHP incorporate more language that would dictate agency action as it pertains to federal decision making while other commentors requested the ACHP enter the rule making process to make this policy more binding on federal agencies. However, the overwhelming majority of commenters recognize this policy as establishing an appropriate set of high-level principles to better inform how historic preservation accounts for Indigenous knowledge. Additionally, ACHP policy statements are not intended to create new legal requirements. Rather, they reflect the ACHP's position on existing legal requirements and provide additional guidance on specific topics. The ACHP has both a broad authority and the statutory responsibility to advise the President and Congress on matters related to historic preservation, to recommend measures to coordinate activities of federal, state, and local agencies and private institutions and individuals relating to historic preservation and to review the policies and programs of federal agencies and recommend methods to improve the effectiveness, coordination, and consistency of those policies and programs.

Indigenous Knowledge as valid and self-supporting. 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, and an aspect of the best available science. Commenters asked for clear language recognizing 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 106-related decisions about properties of religious and cultural significance to Indian Tribes and NHOs. Some 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.

Many comments raised the need for deference to Indigenous Knowledge in cases where that expertise is required to make fully informed decisions in the 106 process. Other commenters asked for more information about the word "deference" and questioned its use in the policy. It is appropriate to use the

word deference consistent with other ACHP policy statements, such as its Policy Statement on Burial Sites, Human Remains, and Funerary Objects, and to reflect the fact that Indigenous Knowledge is necessary to identifying, evaluating, assessing effects to and mitigating effects to historic properties and other sites of religious and cultural significance to Indian Tribes and Native Hawaiians, and therefore to make fully informed decisions in the 106 process consistent with 800.4(c)(1).

Compensation. Many participants raised the importance of compensating Indigenous Knowledge holders who are essential to assisting federal agencies in fulfilling their historic preservation responsibilities. Some respondents shared that compensation decisions should be made in consultation with Indian Tribes and NHOs, and one Tribal respondent shared that they already have an existing compensation structure for Cultural Practitioners. Some federal agency respondents commented by asking for more information about compensation mechanisms, and some commenters raised concerns about agency funding availability and constraints. Federal funding mechanisms and constraints vary widely between agencies, already impacting how those agencies fund consultants and contractors frequently compensated in the Section 106 process, including ethnographers, historians, and archaeologists. Consistent with existing ACHP guidance, the final policy statement states that if a federal agency requests an Indian Tribe or NHO to provide Indigenous Knowledge via research, survey, monitoring, or other efforts that are the responsibility of the federal agency under the NHPA, the Indian Tribe or NHO should be reimbursed or compensated like other professionals providing expertise.

Indigenous Knowledge has a role throughout the entire Section 106 process. Individuals asked the ACHP to clarify and underscore the importance of Indigenous Knowledge throughout the 106 process, emphasizing 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 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. To address these concerns, the policy statement discusses each step of the sequential Section 106 process separately, broadly addressing how Indigenous Knowledge should inform the process for agencies to meet their Section 106 responsibilities.

Designated Representatives. Participants widely supported ACHP clarifying that federal agencies need to rely on the appropriate representatives designated by tribal or native Hawaiian leadership. This includes working with designated representatives to assess which resources are representative of the Indian Tribe or native Hawaiian organization and to learn more about any existing governmental, cultural, legal, or social protocols that must be taken into account when collaborating with Indian Tribes or Native Hawaiian organizations. One commenter questioned how they would know who a designated representative is - this is best achieved in consultation with the Indian Tribe or Native Hawaiian organization. Other commenters wanted the ACHP to prioritize that language as it is foundational to their work as a federal agency.

Terminology. Throughout the process of developing the policy statement, individuals have shared their preferences about specific terminology. Most respondents preferred the phrase Indigenous Knowledge to Traditional Knowledge. Some participants shared that they feel the word “traditional” is used mis. Other

commenters recommended a section discussing Indigenous and western scientific approaches in a preamble, and others pointed out that Indigenous Knowledge is knowledge gained through repeated empirical testing of an environment and often scientific in nature. Some comments supported the ACHP's inclusion of Indigenous Peoples, broadly, in the policy statement, and others asked questions about why content in some of the principles was limited to Indian Tribes and Native Hawaiian organizations when Indigenous Knowledge is expertise held by Indigenous Peoples more broadly. Indian Tribes and Native Hawaiian organizations and their role in the 106 process are defined in the existing regulations at 36 CFR 800. Federal agencies must consult with federally recognized Indian Tribes, THPOs, and NHOs, among other parties, and the policy statement addresses requirements specific to consulting with Indian Tribes and NHOs for that reason. However, consistent with existing ACHP guidance, additional consulting parties may participate in the process as additional consulting parties, including non-federally recognized Tribes and Indigenous Peoples and communities across the United States and its territories. Consistent with requests made during consultation by Tribal representatives and by federal agency personnel, further guidance documents on the policy will underscore the difference between regulatory requirements related to government-to-government consultation with Indian Tribes, consultation with Native Hawaiian organizations, and coordination with Indigenous Peoples and their communities/organizations as additional consulting parties in the 106 context.

Consultation Timelines. Multiple commenters wanted the ACHP to address section 106 consultation timelines. They wanted the ACHP to reinforce that the regulations at 36 CFR part 800 establish minimum standards for federal agency interactions with consulting parties. They wanted the ACHP to reinforce that timeline should reflect the complexity in nature of the undertaking and should not be arbitrarily identified. They wanted the ACHP to clarify the federal agencies should recognize and attempt to accommodate any of the internal cultural, political, legal, and social decision-making processes of Indian Tribes and Native Hawaiians that may influence how they identify and prepare for consultation purposes, including the sharing of Indigenous knowledge. Some commenters wanted additional context related to other cultural prohibitions on sharing information including seasonality, the sensitive and or confidential nature of the information, translation from their native language into English, and other considerations. And some commenters wanted the ACHP to clarify that there are external factors, including financial, legal, and political constraints that inform federal agency timelines. The CHP commits to including all of this context in forthcoming guidance meant to inform the implementation of this policy statement.

Agreement Documents and Program Alternatives. Section 106 agreement documents and program alternatives received a lot of conversation. This particular principle changed the most out of all proposed principles. Many participants wanted additional context related to the rights and roles of Indian Tribes and NGO's and the section 106 process several commenters wanted the ACHP to address the limitations federal agencies had in relation to agreement documents and program alternatives. Ultimately, given the expansive and complex nature of agreement documents and program alternatives, participants recommended that the a CHP take a broad approach regarding the expectation that agreement documents and program alternatives more explicitly address the role of Indigenous knowledge and designated representatives than they have traditionally, and that the ACHP commit to further addressing the role of Indigenous knowledge and designated representatives and forthcoming guidance and information papers.

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 than is necessary. Participants flagged that if an Indian Tribe or NHO states 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 share 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 commenters flagged the use of the

word “acquire” as it could imply that information becomes the property of the federal agency. That language has been removed throughout, and language highlighting that Indigenous Knowledge should be consensually shared has been added. Some participants raised topics that the ACHP could address in further implementation materials, such as language about the coordination of NEPA and the NHPA and FOIA exemptions related to Section 304 of the NHPA and ARPA.

Relationship building. Multiple commentors requested that the ACHP add language about the importance of relationship-building to understanding how to best approach asking for and incorporating Indigenous Knowledge into the decision-making process, which the updated policy statement reflects in a standalone principle.

Sacred Sites. Tribal, native Hawaiian, State, and federal commentors overwhelmingly supported the Advisory Council opining on sacred sites and its intersection with Indigenous knowledge. Most commentors felt this was consistent with the ACHP's statutory responsibilities and looked forward to the ACHP creating additional guidance and recommendations, in particular as it relates to the intersection of executive order 13007 with the section 106 process. Commentors asked that the White House council on Native American affairs recent memorandum of understanding be referenced, into that was accommodated. The ACHP intends to make additional references to White House counsel guidance documents, and other federal and tribal resources relating to sacred sites, in a forthcoming guidance document intended to inform the implementation of this policy statement.

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 106 process. 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 commentors suggested that including Indigenous Knowledge earlier in the process would increase the likelihood that agencies will incorporate Indigenous Knowledge into all steps of the 106 process. The policy directly addresses these concerns in section 106 principles, the documentation principle, and multiple others.

Implementing the policy statement. Commentors commended the inclusion of an implementation section in the policy statement. They felt it created accountability and identified necessary actions needed to ensure that this policy statement is implemented. Throughout, participants referenced the need for additional guidance to inform the implementation of this policy statement. The ACHP recognizes this need and is committed to developing this guidance, including incorporating many of the comments and recommendations received during the 12-month consultation process. Commentors also recommended that the ACHP seek to update training materials and ensure their outreach and coordination efforts included the needs of 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 106 process. Participants also referenced a need for ACHP staff involved in providing technical assistance to federal agencies receive training on the importance of Indigenous Knowledge throughout the 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. Some respondents recommended specific processes and protocols at the state level that could be implemented to help achieve the broader goals of the policy statement.

United Nations Declaration on the Rights of Indigenous Peoples. Throughout the development of the policy, commentors requested that it address the Declaration and the information it contains regarding Indigenous Knowledge. Commentors wanted the ACHP to confirm that it recognizes the significance and importance of the declaration and the support it conveys for Indigenous knowledge. Because the

Declaration was developed with input from Indigenous peoples, the ACHP continues to believe that it stands as a guide to what is important to Indigenous peoples, including Indian Tribes and Native Hawaiian organizations. The ACP also advised that federal agencies, state and local governments, and non-governmental institutions, including private contractors, could consider the declaration of reference to help them to help inform any of their outreach, consultation and other efforts that may include Indigenous knowledge.

Requests for additional principles. Throughout the process, there have been requests for additional principles: 1) establishing an additional National Register Criteria (E) for properties of religious and cultural significance to Indian Tribes and Native Hawaiians; 2) requiring revisions to agency missions to ensure they are inclusive of Tribes and NHOs in order to sufficiently integrate Section 106 compliance across those agencies; and 3) speaking to agency responsibilities under Executive Orders 12898 and 14096 on environmental justice and their intersection with the Section 106 process. Conversely, after sharing updated drafts that included draft language referencing agency missions and additional executive orders, most commenters felt that those are outside the scope of the ACHP's authority and failed to guide and direct how Indigenous Knowledge could be better accounted for consistent with the intent of this policy statement. However, the ACHP will seek to further address these recommendations, including criterion E, in forthcoming guidance meant to support the implementation of this policy.

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