

Mendiola, Doris

Subject: FW: Advisory Council on Historic Preservation Comments on Draft Tribal Policy Statement and Tribal Protocol Manual
Attachments: nw.nrc.draft tribal policy statement and tribal protocol manual.achp comments.28may15.pdf

From: Office of Federal Agency Programs [<mailto:ofap@achp.gov>]
Sent: Thursday, May 28, 2015 12:08 PM
To: Bladey, Cindy
Cc: Chang, Lydia; Diaz-Toro, Diana; Talley, Sandra; McGrady-Finneran, Patricia; O'Sullivan, Kevin; Camper, Larry; Sarah Stokely <sstokely@achp.gov>
Subject: Advisory Council on Historic Preservation Comments on Draft Tribal Policy Statement and Tribal Protocol Manual

From: Office of Federal Agency Programs
Advisory Council on Historic Preservation
Attached is our letter on the subject undertaking. (in Adobe Acrobat PDF format)

If you have any questions or concerns regarding our letter, please contact:

Sarah Stokely
202) 517-0224
sstokely@achp.gov
Case #9212

Note: No need to reply to sender unless there are any concerns regarding the transmittal of this email.

12/01/2014
79 FR 71134

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Preserving America's Heritage

May 28, 2015

Ms. Cindy Bladey
Chief, Rules, Announcement, and Directives Branch
Office of Administration
U.S. Nuclear Regulatory Commission
Mail Stop: 3 WFN-06-44M
Washington, DC 20555-0001

Ref: *Advisory Council on Historic Preservation Comments on Draft Tribal Policy Statement and Tribal Protocol Manual (Docket ID NRC-2012-0235)*

Dear Ms. Bladey:

The Advisory Council on Historic Preservation (ACHP) has reviewed the U.S. Nuclear Regulatory Commission's (NRC) draft Tribal Policy Statement and Tribal Protocol Manual. We have provided comments for both documents in the attachment (see enclosed), which we understand is the first Tribal Policy Statement and Tribal Protocol Manual developed by the NRC.

Our comments are focused on the clarification of Section 106 of the National Historic Preservation Act (NHPA), 54 U.S.C. §306108 et. Seq., as set forth in its implementing regulations, "Protection of Historic Properties" (36 C.F.R. Part 800 (2004)), and the specific vocabulary used in both documents. We believe that the NRC is taking a major step in creating a Tribal Policy Statement and Tribal Protocol Manual. Accordingly, we encourage the NRC to continue working with the Native American communities and Native Hawaiian Organizations in developing and finalizing these documents.

Should you have any questions or wish to discuss this matter further, please contact Sarah Stokely at 202-517-0224, or by e-mail at sstokely@achp.gov.

Sincerely,

Charlene Dwin Vaughn, AICP
Assistant Director
Federal Permitting, Licensing and Assistance Section
Office of Federal Agency Programs

Enclosure

ACHP comments on draft Tribal Policy Statement and Tribal Protocol Manual

ACHP comments on U.S. Nuclear Regulatory Commission draft Tribal Policy Statement and Tribal Protocol Manual (Docket ID NRC–2012–0235)

The Advisory Council on Historic Preservation (ACHP) has reviewed the U.S. Nuclear Regulatory Commission's (NRC) draft *Tribal Policy Statement* and *Tribal Protocol Manual*. Below we provide comments for each document. Our comments focus on the clarification of Section 106 of the National Historic Preservation Act (NHPA), 54 U.S.C. §306108 et. Seq., as set forth in its implementing regulations, "Protection of Historic Properties" (36 C.F.R. Part 800 (2004)), and the specific vocabulary used in both documents.

Tribal Policy Statement and Tribal Protocol Manual

The ACHP recommends including Alaska Natives and Native Hawaiians in the NRC Tribal Policy Statement and the Tribal Protocol Manual. The NRC is responsible for licensing materials in Alaska and Hawaii. Additionally, the NRC should avoid homogenizing Native American tribes and reference Native American communities, not the Native American community.

Tribal Protocol Manual: Section 2.C National Historic Preservation Act

Due to the recodification of the regulations, the Section 106 of the National Historic Preservation Act (NHPA) is officially 54 U.S.C. §306108. These changes became effective December 19, 2014. This recodification was carried out as part of a larger effort to better organize all the statutes related to the National Park Service, which plays a key role in the NHPA due to its duties connected to the National Register of Historic Places and the State and Tribal Historic Preservation Offices, among others. The recodification also resulted in the removal of obsolete provisions, changes to the location of some sections and subsections so they are grouped thematically, and the correction of technical errors. However, none of the changes are substantive. The requirements and programs under the NHPA remain the same. They are simply better organized and located in a new title of the U.S. Code.

Tribal Protocol Manual: Section 2.C National Historic Preservation Act

The ACHP recommends replacing *interested parties* with *consulting parties*. As defined under in 36 C.F.R. § 800.2 of 36 CFR Part 800, the regulations recognize that in addition to the parties listed, certain individuals and organization with a demonstrated interest in an undertaking are appropriate to participate in the Section 106 review as consulting parties due to the nature of their legal or economic relation to the undertaking or affected properties, or their concern with the undertaking's effect on historic properties (36 C.F.R. § 800.2(d)). Suitability of individuals or organizations to be consulting parties is not limited exclusively to those who have concerns about the undertaking's effect on historic properties.

Tribal Protocol Manual: Section 2.C National Historic Preservation Act

The ACHP recommends removing the word *extensive* when describing adverse effects.

Tribal Protocol Manual: Section 2.D National Historic Preservation Act Consultation Responsibilities

The ACHP recommends adding government to government consultation with tribes is required for undertakings that occur on and off tribal lands. The NRC is responsible for identifying the appropriate tribes to consult for a specific undertaking and allowing the tribes to participate in the Section 106 review process.

Tribal Protocol Manual: Section 2.D Tribal Historic Preservation Officers (THPOs)

The ACHP recommends that footnote number 30 should state that the National Park Service maintains a list of tribes that have assumed the responsibility of the SHPO for purpose of Section 106 compliance on Tribal lands.

Tribal Protocol Manual: Section 1.C

The ACHP recommends removing the phrase *from a Native American perspective*. Unless the document was written by a Native American or a group of Native American authors, the phrase should not be used.

Tribal Protocol Manual: Section 2.B

The ACHP recommends replacing the word *invite* with *ensure*. The federal agency does not invite tribal participation in the NHPA and NEPA process.

Tribal Policy Statement: II. Background

The ACHP recommends defining *interactions* and using *interactions* consistently throughout the document. In certain cases, *interactions* could be confused with more formal government to government consultations.

Tribal Policy Statement: II. Background

The ACHP recommends defining *substantial direct effects* in order to provide clarity to the NRC's practices addressing the Executive Order 13175.

Tribal Policy Statement: V. Proposed Policy Statement

2. The NRC Recognizes the Federal Trust Relationship and Will Uphold Its Trust Relationship with Indian Tribes

The ACHP recommends expanding the discussion on trust responsibility and including an acknowledgement of trust responsibility. For more information about trust responsibility, please reference the Bureau of Indian Affairs definition of trust responsibility (<http://www.bia.gov/FAQs/>).

Tribal Policy Statement: V. Proposed Policy Statement

3. The NRC Will Conduct Outreach to Indian Tribes

The ACHP recommends specifying *outreach* should be done in addition to formal government to government consultation with Native Americans tribes and/or Native Hawaiian Organizations. Also, the NRC should include a definition for *outreach*. Outreach and consultation should be discussed as two separate activities conducted by the NRC.

ACHP comments on draft Tribal Policy Statement and Tribal Protocol Manual

Tribal Policy Statement: V. Proposed Policy Statement

4. The NRC Will Engage in Timely Consultation

The ACHP recommends stating that it is the federal agency's responsibility to engage in consultation. It is not the tribe's responsibility to request engagement in consultation.