

Summary of Discussions
Nuclear Regulatory Commission
Tribal Liaison Team
Outreach to Montana Tribal Historic Preservation Officers
May 15-24, 2016

Tribal Historic Preservation Office Operations

- Some of the Tribal Historic Preservation Officers (THPOs) have been in their positions two years or less; there are challenges in assuming this great responsibility and setting a direction of success for their offices. These THPOs benefit from a good working relationship with THPOs who have led their offices for many years.
- THPOs maintain cooperative and collaborative working relationships; they share work in conducting surveys, or consulting on the numerous energy projects proposed for the region.
- Some THPOs have explored potential formal collaborative agreements.
- Staffing levels vary, with some THPO offices employing specialists for functional areas, while one office has no paid staff beyond the THPO. THPO Offices without a specific function covered, such as an archaeologist, may contract with the Bureau of Indian Affairs for these services.
- The U.S. Forest Service supports internships for THPO offices. One THPO was not able to receive Tribal government approval to hire an intern, due to a perceived conflict of interest on Forest Service projects.
- Some offices have plans for expanding the staff in the near term, resources permitting. One THPO estimated that six-seven staff members are needed, at a minimum, to maintain a smooth functioning office.
- All THPOs have responsibility for protecting cultural resources across a vast area, covering many states that trace movement from current Midwestern/Eastern states, south toward current New Mexico, and/or north into present day Canada. The historic movement of Tribes resulted in burial sites, sacred plants, and culturally sensitive sites being disbursed across these areas.
- Tribal culture in the Montana area reaches back thousands of years and is evidenced by the density of sacred and historic properties.
- All THPO offices face the challenge of responding to consultation requests across these large territories with limited financial resources. Generally, THPO financial resources are not matched to the demands of the office. One THPO office functions only on National Park Service (NPS) funding of under \$100,000 per year. The NPS Historic Preservation Fund grants funding to THPO offices through an apportionment formula that considers the number of THPO offices, as well as the land managed by each THPO office.
- In some cases, THPOs must pay their own travel expenses to visit sites for consultation work. Even when THPOs will receive future reimbursement for travel, it is a hardship to pay these costs up front; advanced payment is needed.

- All THPO offices, but one, subscribe to the Federal Communications Commission (FCC)-sponsored Tower Construction Notification System (TCNS). This system allows project proponents for permits with the FCC to communicate directly with THPOs on National Historic Preservation Act (NHPA) Section 106 consultation for upcoming projects during a project's early planning stage.
- Project proponents pay fees ranging from \$350-\$400 for the THPO's initial review to determine if the Tribe wants to further consult on a project. This initial review may indicate a survey or additional measures to support the FCC's compliance with the NHPA. Project proponents pay the THPO for these additional services, which may include compensation for surveyors, as well as associated travel expenses.
- Some THPO offices have expanded capability to receive requests for consultation electronically from others besides FCC project proponents. For example, one Tribe uses "Tribal 106," an online consultation request program, and supports Section 106 consultation work for another Tribe. A similar fee structure applies.
- The "Tribal 106" processing service is being actively marketed to other Tribes. Other THPOs can use this service for a fee.
- THPOs still receive many requests for consultation by letter and information from these requests may be added to these systems.
- Some THPO have sufficient resources to respond to consultation requests within the usually requested 30-day timeframe; others do not.
- Several THPO offices conduct training for monitors and surveyors to support their operations. This training certifies participants for a range of duties, including surveying, and oversight and monitoring of construction.
- In addition to consultation for Federal undertakings, THPOs are engaged in consultative work for State and local projects, as well as private companies.
- All THPOs are proactively engaged in numerous cultural preservation activities, videotaping Elders, pursuing repatriation of archaeological materials, identifying important cultural sites and medicinal plants and building and maintaining cultural databases.
- To support this work, some THPOs have a collaborative working relationship with the Montana and/or Wyoming State Historic Preservation Officers (SHPO) and access to State files. THPOs are reaching out to other SHPOs to develop similar cooperative relationships.
- Language preservation is a major concern among many Tribes across the country, including some in Montana. In some Tribes, few remain who are fluent in Tribal languages. THPO offices are actively supporting efforts to preserve language and ensure that younger generations become speakers. The State of Montana has provided funding for one such program.
- One THPO noted that it is a challenge to preserve Tribal spiritual practices in competition with churches.
- One THPO office has a significant focus on research to provide a foundation for identifying and preserving significant cultural resources. The office is engaged in collaborative research projects with universities.

- Many THPO programs are supported by committees or councils of Elders, who share knowledge in support of the THPO's preservation work, and advise Tribal Councils or other governing bodies on preservation matters. Participation by these Elders in identification and preservation activities is critical, because of the unique knowledge that they possess on Tribal history and culture.
- Despite the many similarities in the operations of THPO offices, there are differences in how each Tribal government organizes and manages the preservation function; understanding these differences and being responsive to the different requirements of each government are important for developing a successful consultation strategy.

National Historic Preservation Act, Section 106 Consultation

- THPOs described several good practices by Federal agencies in consultation.
 - The North Dakota Department of Transportation (NDDOT), which carries out Section 106 consultation for the Federal Highway Administration, supports semiannual meetings of THPOs as members of a Tribal Consultation Committee to review upcoming highway projects. NDDOT has engaged a Tribal Elder to provide general guidance in the operations of the Committee.
 - The FCC TCNS expedites Section 106 review of thousands of FCC undertakings. This process places the burden on the project proponent to contact Tribes to initiate discussion on projects. The majority of these requests are closed after the initial THPO review. This electronic process seems to have increased efficiency in THPO office operations.
 - The FCC directs their project proponents to submit documentation to Tribes early in the licensing process, before conducting ground surveys; this early submittal allows Tribes to conduct surveys together with project contractors/consultants.
 - The National Association of Tribal Historic Preservation Officers' annual meeting is a good forum for sharing information with THPOs and is used by several Federal agencies.
 - One regional Bureau of Land Management (BLM) office holds periodic conference calls on upcoming projects, and one permits Tribes to survey along with archaeologists or other consultants hired by project proponents.
 - Some regional Forest Service offices provide periodic written notification of upcoming projects or periodic visits to discuss upcoming projects.
 - The Federal Aviation Administration opens consultation with a guest presentation to each relevant Tribal Council.
 - Some Federal and/or State agencies have contacted one THPO during the planning stage of a project to conduct Tribal land use studies. Costs for these studies have ranged from \$21K-\$40K, but depend on the requirements of the study. One study conducted for Montana Power allowed the company to adjust its plans to avoid sacred places.
- Several concerns regarding the Federal Section 106 consultation process remain.

- THPOs must maintain confidentiality on certain historic properties, such as vision quest sites and Federal agencies should have consultation processes that respect this need.
 - There is not consistent early engagement of Tribes in projects—during the planning stages---as directed by guidance from the Advisory Council for Historic Preservation.
 - Project proponents hire consultants to do surveys before Tribes have access to project sites. These professionals lack the expertise to identify historic properties for Tribes, who alone possess the knowledge to carry out identification. Some THPOs expressed concern that items may be moved or removed from a site that should not be disturbed.
 - Plants that are used for medicinal or ceremonial purposes should be considered during traditional cultural property determination, and are rarely addressed in survey reports or mitigation efforts.
 - Federal agencies do not fully grasp the affinity that Tribes have for the land or the philosophy that Tribes must protect the land that has provided for them.
 - Federal agencies do not recognize sacred landscapes and instead focus on specific sites within these landscapes. The area of potential effect for projects, as defined by the agency, many times do not account for the impact on vast sacred areas.
 - Federal agencies do not always appropriately comply with National Parks Service Bulletin 38 on the evaluation and documentation of traditional cultural properties.
 - Sites of spiritual ceremonies remain sacred, although there may not be physical evidence of their significance. Tribes are the guardians of these sites that provide spiritual messages to current generations.
 - Federal agencies do not understand the difference between formal government-to-government consultation and a request for consultative services from a THPO office. While the ACHP has indicated that Federal agencies should not have to pay for formal government-to-government discussions with Tribal officials, the work performed by THPO offices to support Federal compliance with the NHPA does not fall within this definition. Federal agencies should pay THPO offices for performing project reviews, surveys and other services in the same way that agencies pay consultants and archaeologists. A coalition of Montana Tribes is advocating for legislation that would require Federal agencies to pay for the services provided by THPOs. The ACHP should also provide more guidance on this issue.
 - Tribes want monitors present during ground disturbance and construction. Mitigating issues after ground disturbance is challenging.
 - It is challenging for Tribes to keep track of the different requirements among SHPO offices.
 - There continue to be barriers to Tribes gaining access to privately-owned land for preservation work.
- Specific feedback on the NRC's NHPA Section 106 consultation processes.

- There is appreciation for the effort that the NRC has made to have face-to-face meetings for meaningful communication and consultation with Tribes on projects and issues.
- There are concerns about how the NRC addresses medicinal plants in its Section 106 reviews. For the Strata Energy-Ross project, one THPO expressed concern that the NRC did not adequately consider the impact of the project on medicinal plants. There is a similar concern for the impact of the Kendrick expansion project, especially underground operations of this project. This project is located in a major “thoroughfare” for many Tribes who have historically moved throughout the area.
- One THPO indicated no interest in consulting on the Kendrick expansion project.
- The Bear Lodge project is of great concern to many THPOs, due to proximity to the Black Hills.
- The NRC’s open survey works to some degree; however, the process could be improved by having the open survey early in the project life, before major decisions are made.
- The NRC’s organizational structure and chain of command are not clear. A THPO does not know whom to contact when there is a problem.
- The NRC has not provided adequate information on the licensing process, the uranium recovery process and the risks associated with this process.
- The NRC needs to clarify its consultation and engagement process for Tribes and how the agency plans to involve Tribes in other aspects of its projects outside of the NHPA Section 106 consultation.
- The NRC’s consultation procedures and protocols must be informed by input from Tribes.
- The best way for the NRC to gather viewpoints from Tribes to be incorporated into policies or procedures would be to organize a meeting of consulting Tribes for a collective consideration of these processes; those developing the policies and procedures need to hear directly from Tribes through a face-to-face exchange.
- One THPO expressed the view that the NRC needs to keep discussions between Tribes and the agency confidential. Transcripts or summaries of discussions between Tribes and the agency should not be available on the Web.
- One THPO expressed opposition to any kind of nuclear activity and two THPOs mentioned specific opposition to transportation of any type of radioactive material across Tribal lands.
- General good practices for Tribal consultation
 - Each agency should use Executive Order 13175 to guide its approach to consultation.
 - Agency project managers should recognize the sovereign nation status of each Tribe and address the different needs of each Tribal government in consultation.
 - Good consultation flows from the development of good relationships.
 - Successful consultation respects Tribal knowledge systems that teach a close relationship with and responsiveness to nature.

- Agencies should provide early notification and engagement of Tribal government with transmission of key project documents and maps together to the THPO for initial Section 106 review.
- A simple map showing the project location and boundaries would be useful as part of a mailing requesting consultation.
- Agencies should use discretion in determining when to use different types of communication. THPOs are amenable to using *Skype*, *GoToMeeting* or other types of e-meetings for some issues. However, face-to-face discussion is essential for addressing sensitive issues.
- THPOs appreciate the opportunity to come together to discuss a project in a face-to-face setting.
- There is recognition that permitting and licensing agencies, like the NRC, may not become involve in a project until it has moved beyond the early planning stages. However, these agencies, in particular, should provide education to their project proponents on the role of Tribes in the project review process and strategies for engaging Tribes in a successful, efficient review process. THPOs would be willing to participate in agency efforts to educate project proponents, if requested.
- Project proponents should consider engaging with THPOs about projects, before submitting an application for review to Federal licensing and permitting agencies.
- Project proponents benefit from contacting Tribes directly, early in a project's planning stage to coordinate Tribal involvement and to gain an early understanding of potential issues and challenges. The use of consultants at this stage of a project may not be as effective.
- Agencies should act in accordance with ACHP guidance on communication during the Section 106 consultation process and recognize that just sending letters or phone notification of a project is not considered adequate consultation.
- Shared information on specific project consultations
 - The BLM conducted a controlled burn of the Henry Smith archaeological site in the Hi-Line district of Montana, an area that contains thousands of sites of historic or cultural significance to Tribes. The only prior notification to THPOs was a single line in a lengthy letter that listed several other upcoming projects. One THPO may not have received this letter. THPOs receive a significant volume of mail. THPOs indicated that this notification was woefully inadequate for a project on such a sensitive site. This project will be the topic of a meeting with the BLM in fall 2016.
 - Tribal opposition to drilling leases in the Badger-Two Medicine area of the Rocky Mountain Front resulted in Department of Interior cancellation of all drilling in this area in 2015, after 30 years of challenging these leases.

Wyoming Agreement State application

- NRC staff shared information on Wyoming's request to become an Agreement State.

- All THPOs expressed an interest in obtaining more information on this application and the impact on Tribal engagement on uranium recovery licensing.

Other Concerns Regarding the Social and Economic Context for Projects

- Many Tribal communities struggle with high unemployment, possibly as high as 80%.
- The distribution and use of methamphetamine is having a devastating impact on the health and development of youth.
- The economic development projects in the region are not providing a benefit to Tribal nations. Tribes are called for consultation on cultural property preservation for projects, but are not included in the employment or business opportunities that flow from these projects.