



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.