Oregon Tribal Historic Preservation Offices: The Problems and Challenges of Starting and Maintaining a THPO

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OREGON TRIBAL HISTORIC PRESERVATION OFFICES: THE PROBLEMS AND CHALLENGES OF STARTING AND MAINTAINING A THPO

By

KARLY RAE LAW

B.A. Anthropology, Oregon State University, Corvallis, Oregon, June 2013

Thesis

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As of December 31, 2015, of the 567 federally recognized tribes, 167 have established a THPO (at the time of this writing) that is recognized by the National Park Service (NPS). To manage a federally recognized THPO, a tribe must officially enter into agreements with the National Park Service on behalf of the Secretary of the Interior. There are a total of nine federally recognized tribes in Oregon, of which six have a federally recognized THPO. Two of the Oregon THPO’s were interviewed: The Confederated Tribes of Grand Ronde Indian Community and the Cow Creek Band of Umpqua Tribe of Indians. The goal of this research is twofold: through the interviews, I hope to understand the challenges that these tribes faced when they first began the process of creating their THPO and to find ways to make starting and operating a THPO less of a challenge.
# Table of Contents

*Abstract*  
iv

*List of Figures*  
vi

*Acknowledgements*  
v

*Introduction*  
1

**Chapter 1: Native and Euro-American Conflicts from a Heritage Perspective**  
4

- Cultural Heritage Laws  
10
- Tribal Historic Preservation Offices (THPOs)  
16
- Application Process  
17
- Historic Preservation Fund  
18
- Preservation Programs  
23
- Oregon THPOs  
24

**Chapter 2: Methods**  
26

- Interview Process  
26
- Interview Structure  
26
- Data Analysis  
28

**Chapter 3: Results**  
29

- Confederated Tribes of Grand Ronde Indian Community  
29
  - Pre-THPO  
30
  - Post-THPO  
32
- Cow Creek Band of Umpqua Tribe of Indians  
33
  - Pre-THPO  
35
  - Post-THPO  
38

**Chapter 4: Recommendations and Discussion**  
41
Application Process 41
Funding 42
Consultation 44
  Consultation Process 45
  Consultation Challenges 46
  Successful Consultation 49
Discussion 50

Chapter 5: Conclusion and Future Research 51

Bibliography 54

Appendix A: Informed Consent Form 63
Appendix B: Letter to OR THPO 64
Appendix C: Interview Questions 66
Appendix D: NPS THPO Application 68
List of Figures

Figure 1. Historic Preservation Fund appropriation by Congress 1976-2013
Figure 2. Historic Preservation Fund FY2010-FY2017 (NATHPO 2016)
Figure 3. Average award per THPO and number of THPOs from FY2004-FY2013
Figure 4. Ceded Lands of the Grand Ronde
Figure 5. Grand Ronde Historic Preservation Department chart
Figure 6. Cow Creek Tribe Ceded lands
Figure 7. Cow Creek Tribe Natural Resources Department chart
Figure 8. Historic Preservation Fund and THPO FY1996-FY2015
Figure 9. Section 106 Consultation chart
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Introduction

Tribal Historic Preservation Offices are the outcome of socio-political movements by Native political activists throughout the 1960s and through the 1980s, when tribal peoples publicly advocated for greater tribal sovereignty, the protection and recognition of heritage, traditions, and cultural areas. In 1992, amendments were made to the National Historic Preservation Act (NHPA) to include the creation and recognition of federally recognized Tribal Historic Preservation Offices (THPOs). THPOs are obligated to implement tribal and federal preservation laws on tribal lands, and in this manner, obtain some, or all of the responsibilities State Historic Preservation Officers (SHPOs) have involving tribal cultural properties and artifacts on tribal lands.

The majority of Native identity comes from the land and the connections and associations taught and expressed through creation stories, storytelling, songs, dances, place names, ceremonies, pilgrimages, sacred trails, and a multitude of other ways. Through these connections, Native peoples are linked to their ancestral lands, which help to create, maintain, and continue their identities for generations. By assuming the legal responsibilities associated with a THPO, tribes are able to exert their sovereignty over their cultural heritage, which will help ensure the continuation of their cultural identities and connections to their ancestral lands.

How difficult is it for a tribe to create a THPO? What challenges do they face when first starting the process? Do they continue to have these problems while maintaining the office? Do the 1992 amendments to the National Historic
Preservation Act (NHPA) help tribes preserve and protect their heritage, or have tribes experienced more challenges and set backs than benefits?

This research seeks to answer these questions for a specific setting by speaking with three THPOs of Oregon to understand the challenges of the National Park Service Tribal Historic Preservation Program. By answering these research questions, I hope this document will provide some assistance to these tribes, and others in North America, who seek to operate a Tribal Historic Preservation Office with a stronger and more diverse foundation of past experiences. I will address the issues that the Oregon THPOs have had in the past and currently face today. By learning and understanding these challenges, other tribes working on implementing a federally recognized THPO can better prepare and plan for the process and be ready to face individual challenges.

By utilizing Marxian and Indigenous theories, my research will follow these theoretical frameworks in examining the historical background of federal Indian law and cultural heritage protection laws. These theories break down the power structures of how Western society has controlled the cultural heritage of Native peoples of North America. By gaining a stronger position in the protection and interpretation of their heritage, the historic and pre-contact sites and artifacts of the Native peoples are interpreted through an indigenous perspective while following the Western framework in place.

Chapter 1 provides a brief background on the laws and regulations that affected tribes in the late 1800s to the political movements and their affects on laws and regulations affecting tribes in the 1960s and 1970s, and then discussing the
implementation of the 1992 amendments to the National Historic Preservation Act. In reviewing this historic framework, I will highlight and summarize prior research that has been completed regarding tribal involvement in cultural heritage as Tribal Historic Preservation Offices through the National Park Service.

Chapter 2 describes the research methods and justifies the interview process that was chosen. Similarities and differences between the experiences of the THPOs will then be examined and analyzed in Chapter 3, with a discussion concerning possible solutions to the challenges provided in Chapter 4. In conclusion, I will summarize and advocate for additional research to fully understand all challenges that tribes face, and the solutions that could alleviate these challenges.
Chapter 1: Native and Euro-American Conflicts from a Heritage Perspective

Since European contact in the Americas, there have been conflicts between Euro-Americans and Native peoples, particularly when it comes to land and the natural resources they contain (Haas 1957). These natural resources include, but are not limited to: timber, coal, gold, oil, water, agricultural lands, and animals. Greatly supported by President Andrew Jackson, Congress enacted the Indian Removal Act of 1830, which attempted to segregate Native peoples from the colonists, and provided more land for Euro-American settlement (Haas 1957, Wall 2010). This act pushed many Native peoples into what was called “Indian Territory”, land west of the Mississippi River, but this was not enough; the settlers continued to push the Native peoples further west, resulting in further losses of lands and resources. By 1887, approximately 139 million acres of land were converted into “reservations”. On these reservations, Native peoples of North America were under the government’s “protection” but also kept them away from the settlers (Haas 1957:12).

In 1887, the General Allotment Act, or Dawes Act, attempted to break-up and individualize reservation lands that were created by the Indian Removal Act and the hundreds of treaties which followed that act, and also “take away” the concept of “tribe” and “tribal sovereignty” (Haas 1957). The reservations were allotted and 160 acres given to each head of family. These lands were held in trust by the federal government for 25 years, after which, the families were expected to have made an annual income and pay property tax. The surplus lands, or reservation lands not allotted, was then sold to settlers. The Dawes Act was intended to assimilate Native
peoples into Western society, but the direct result was the loss of more than half of their lands because they couldn’t pay the taxes or assimilate into Western society. The policy caused the widespread poverty of Native peoples that has had a lasting affect to the present (Lawrence 1975:291). Euro-Americans were then able to buy the ‘surplus’ lands that the Native peoples couldn’t pay taxes on, resulting in a checkerboard look to reservation lands belonging to Natives and non-Natives.

In 1934, the Indian Reorganization Act (IRA) ended the further dividing and allotting of Indian lands, but lands that had already been allotted remained so (Haas 1957). John Collier, the Commissioner of Indian Affairs at the time, actively advocated for the IRA in which he “…fought to realize a dream in which Indian tribal societies were rebuilt, Indian lands rehabilitated and enlarged, Indian governments reconstituted or created anew, and Indian culture not only preserved but actively promoted” (Lawrence 1975:292). Along with ending the allotments, the IRA also enabled tribes to self-govern, but this was limited due to their constitutions needing to be approved by the Secretary of the Interior, therefore, limiting their self-government. This was another way for the federal government to force the assimilation of the tribes by requiring them to reorganize their governments and constitutions to mirror their own. Funds were also allocated to assist tribes develop their governments, but were diminished from $500,000 to $250,000 a year (Lawrence 1975). There was also the addition of establishing a blood quantum requirement, allowing only people of ½ tribal blood entitled to the benefits of the IRA (Lawrence 1975:297). Currently, tribes are allowed to establish their own qualifications for tribal enrollment (Bureau of Indian Affairs 2016). With the
instatement of “blood quantum”, or the requirement of tribal members meeting a qualifying ancestry, Native peoples are continually reminded that they are slowly vanishing and being made to assimilate into Western society.

Throughout Collier's tenure as Commissioner of Indian Affairs, especially during World War II, he began loosing political ground on his vision of improving reservation life. The general public and politicians interpreted his work as an attempt to “Sovietize” the tribes (Lawrence 1975). In 1945, Collier resigned and attempts to aid tribes from inside the federal government diminished exponentially.

Surprisingly, the Indian Claims Commission was passed in 1946, which allowed tribes to bring claims against the United States (Pierce 1977). Unfortunately, there was a catch; even though tribes could now file suit with the federal government and receive payment from past agreements with the federal government, it also diminished federal control of national forests and other lands with natural resources that states wanted to obtain (Wall 2010).

At the time, there was a serious economic recession due to the post-war of World War II and the beginning of the Cold War (Wall 2010). Soldiers were coming back from the war and the need for housing and jobs increased exponentially. There was also the push for using natural resources such as uranium for the creation of weaponry (Wall 2010). This need of at-home resources helped spur on the termination era, a policy designed to eliminate the federal recognition of tribal nations, along with treaty rights and the federal government’s responsibility to keep those rights, and the end of reservations (Stuart 1977).
The termination era was a trying time for all Native Americans. The impetus for policy shift was a 1949 report (Hoover Commission), which recommended the “complete integration” of Native Americans into western society (Lederle 1949, Pevar 2012). The Indian Bureau’s voluntary relocation program in 1952 was created in the hopes of encouraging Native peoples leaving the reservation to build a life in the urban areas, while buying their land allotments (Philp 1983, Wall 2010). The promise of a new urban life was not met for many; approximately 30% of the Native peoples who participated in the program returned to their reservations due to the racism and cultural isolation they faced, and the near impossibility in obtaining a decent job and adequate housing (Philp 1983).

In 1953, following the Hoover Commission, the House Concurrent Resolution No. 108 was passed, declaring that, “it should be the policy of the United States to abolish Federal benefits and services to Indian tribes as rapidly as possible” (Pevar 2012). That same year, Public Law 83-280 was passed, which gave six states (Alaska, California, Minnesota, Nebraska, Oregon, and Wisconsin) criminal jurisdiction over tribal lands. This meant that the state could then enter reservations and tribal lands to arrest Native Americans and prosecute them in state courts.

For tribes, the termination era was a time of great suffering for Native peoples (Pevar 2012). Many tribal governments were disbanded; 109 reservations were abolished and Native American communities and their cultures faced complete destruction (Deloria 1969, Pevar 2012). But after centuries, of being pushed aside, including the mid-twentieth century struggle to keep their identities in the
“termination era”, there an important shift in federal Indian policy occurred (Deloria 1969).

The termination era continued throughout the early part of the 1960s, but soon after, the “Tribal Self-Determination Era” began. In the late 1960s, President Lyndon B. Johnson declared that, “...We must affirm the rights of the first Americans to remain Indians while exercising their rights as Americans. We must affirm their rights to freedom of choice and self-determination” (Pevar 2012). The Indian Civil Rights Act of 1968 was signed into law, conferring certain individual rights and protections on all persons under tribal authority (i.e. freedom of speech, freedom of the press, protection against unreasonable search and seizure, right to a jury trial in criminal cases in tribal court, etc.), and also limiting the punishments that tribal courts may impose on persons convicted of a crime (Pevar 2012, Tribal Law and Policy Institute 2016). In 1978, in *Santa Clara Pueblo v. Martinez*, the Supreme Court stated, “As separate sovereigns pre-existing the Constitution, tribes have historically been regarded as unconstrained by those constitutional provisions framed specifically as limitations on Federal or state authority” (436 U.S. 49[1978]). This means that internal (intratribal) controversies are in the hands of the tribe, not state or federal governments (Pevar 2012).

Throughout the 1960s and 1970s, many political protests, such as the Civil Rights Movement and the Women’s Movement, worked against the power structure of the federal government. Native peoples began to publicly voice their problems as well with how the federal government had, and continued to, treat them when it comes to their sovereignty, protection of their heritage, and the practice of
traditions. Even with the Indian Civil Rights Act, the problem of the federal government excluding Native peoples on projects occurring on/within tribal ancestral lands persisted.

The American Indian Movement (AIM)/Red Power Movement was a movement that helped regain the tribal voice in federal government and in regaining recognition. Through their political protests and gaining support from other groups, such as the Society of American Archaeologists, Native Americans were able to get laws passed, such as:

• **American Indian Religious Freedom Act of 1978**: which made federal agencies recognize the importance of certain places that are culturally important to tribes that they need to consider avoiding when projects are being planned, protected for tribes, and also accessible to tribes to continue practicing their traditions. National Register Bulletin 38 falls within this Acts’ parameters, and establishes the recognition of Traditional Cultural Properties (TCP’s). Federal agencies are required to protect these properties and make them accessible to tribes.

• **The Moss-Bennett Act of 1974**: made it possible for the establishment of additional tribal archaeology programs (Downer 2003).

• **Indian Self-Determination and Education Assistance Act of 1975**: allow tribes to administer various federal Indian programs on reservations and to foster tribal self-government and self-reliance (and reduce federal domination) by permitting tribes to administer federal programs on the reservation (Pevar 2012).
• **Native American Graves Protection and Repatriation Act of 1990:** which allows tribes to recover religious and cultural items belonging to them that were held in federally funded institutions, and, to protect the right of tribes to safeguard all human remains and artifacts that might be found or excavated on federal, or tribal lands.

* Cultural Heritage Laws *

Because of the federal government and the Euro-American’s stance on Indian affairs, the relationship between archaeologists and Native peoples of North America has been fraught with conflict (Downer 1997). Archaeology developed as a science in the 1800s in no small part because of the spread of colonialism and the European colonists’ belief of their right to study and exploit cultures “inferior” to their own (Ferguson 1996, Riding-In 1992). This belief and practice helped enforce Native peoples distrust of archaeologists and their studies, which greatly threatened their ancestors remains (Watkins 2000:3). The system protecting cultural items and heritage sites has been, and continues to be corrupt, but there is still the opportunity for change and greater cooperation between archaeologists and Native peoples (Colwell-Chanthaphonh et al. 2010, Downer 1997, McGuire 1992, Watkins 2000).

The first archaeological law enacted was the Antiquities Act of 1906, which did little but state that those who negatively impact historic or prehistoric sites on federal lands can be fined and imprisoned. Those Native features, sites, and human remains found on federal lands were defined as “archaeological resources” and were therefore “federal property” (16 U.S.C. §§ 431-433). In 1935, the Historic Sites Act
was enacted. The law protects historical structures and led to the creation and implementation of the National Historic Landmarks program. Again, there was no language incorporating the need to include Native peoples in the interpretation and protection of their cultural heritage, reinforcing the belief that Native people’s heritage belonged to the federal and state governments.

The lack of inclusion for Native people in the historic preservation laws continued with the Reservoir Salvage Act of 1960, the Archaeological and Historic Preservation Act of 1960, the National Historic Preservation Act of 1966, and the National Environmental Protection Act of 1969. Consultation language concerning Native peoples was not included into these laws until the Education Assistance Act of 1975 was enacted, and the Indian Self-Determination Act stopped the termination policy during the Johnson Administration in 1968 (Griffin 2009).

Then, with passage of the American Indian Religious Freedom Act (AIRFA) of 1978, the federal government finally began to recognize Native peoples’ rights to their traditions and heritage. Section 2 of AIRFA called for federal departments responsible for administering laws to evaluate their policies and procedures in consultation with Native traditional religious leaders. In doing so, they would then determine appropriate changes necessary to protect and preserve Native American religious cultural rights and practices. The following year, the Archaeological Resources and Protection Act was passed, which required the consent of the tribe(s) be obtained before a federal permit can be issued for the excavation/removal of archaeological materials from Tribal lands.
This legal recognition was a step in the right direction for Native peoples, but there was still a problem: ancestral remains were still being excavated, studied, and put on displays in museums without permission or consultation, and therefore being wrongfully disturbed. In 1979, a series of consultations with Native peoples were held throughout the United States to hear their concerns about the federal regulations (Watkins 2000). The primary concern voiced was the access to and protection of cemeteries, burials, and sacred objects, especially those in museum collections (Watkins 2000). This was the impetus of the Native American Graves Protection and Repatriation Act.

Earlier, a number of bills were considered in Congress, but the Society for American Archaeology fought these bills because they held the belief that there should be no national policy of repatriation (Downer 1997). Instead, they believed that the communication between Native peoples and archaeologists needed to improve, and they must treat extant Native peoples as equals instead of second class (Downer 1997, Ferguson 1996). In 1982, a meeting with the Executive Board of the Society for American Archaeology occurred in which an anti-reburial resolution was discussed. In attendance were Jan Hammil, from the American Indians Against Desecration, and Larry Zimmerman, who both advocated against the resolution (Zimmerman 1997). Zimmerman (1997) noted that resistance to repatriation within the anthropological community was very strong. Archaeologists did not understand why Native peoples did not want their ancestors disturbed, and Native peoples didn’t understand why their ancestors were so important, yet were just sitting in boxes (if they were lucky) in museums (Downer 1997, Watson 2000).
After numerous meetings occurring for over a decade, the Native American Graves Protection and Repatriation Act (NAGPRA) of 1990 was passed and included language that both archaeologists and Native peoples could agree upon (Zimmerman 1997). NAGPRA helped archaeologists and Native peoples consult and cooperate with each other, and forced the archaeologists to finally inventory the collections that had been ignored for so long, and repatriate them (Zimmerman 1997).

In 1992, amendments were made to the 1966 National Historic Preservation Act (NHPA), many of which were intended to help tribes have a stronger voice in the protection of their heritage. Previously, the NHPA was written to produce a broader, more effective approach to how historic preservation was practiced throughout the United States. Since the Antiquities Act of 1906, the federal government was made a full partner and leader in historic preservation of sites on federal lands, and with the passage of the Historic Sites Act of 1935, the Reservoir Salvage Act of 1960, and then the National Historic Preservation Act of 1966, their role was made clearer. In the past, the federal government’s role was indifferent, and they were frequently responsible for the loss of cultural heritage sites (ACHP 2016). Now, the federal governments role is to “provide leadership” for preservation, “contribute to” and “give maximum encouragement” to preservation, and “foster conditions under which our modern society and our prehistoric and historic resources can exist in productive harmony” (ACHP 2016).

The NHPA in its current form sets out to accomplish five primary objectives:
(1) Created State Historic Preservation Offices (SHPOs) and Tribal Historic Preservation Offices;

(2) Created the National Register on Historic Places (the official list of the Nation's historic and archaeological resources);

(3) Provided for the Historic Preservation Fund and other grants for surveys, planning and other preservation-related tasks;

(4) Broadened the consideration of cultural resources with Section 106, which requires federal agencies to consider the effects of their actions (plans and projects) on places in, or potentially eligible, for the National Register, and;


Since its inception, the NHPA has undergone several additions and changes addressing vagueness in sections of the Act and other issues. One of these changes relates to the creation of SHPOs, as they are understood today. The 1980 amendment to the NHPA identified SHPO responsibilities. These responsibilities are outlined in the NHPA Section 101 (b)(3):

(A) In cooperation with Federal and State agencies, local governments, and private organizations and individuals, direct and conduct a comprehensive statewide survey of historic properties and maintain inventories of such properties;
(B) Identify and nominate eligible properties to the National Register and otherwise administer applications for listing historic properties on the National Register;
(C) Prepare and implement a comprehensive statewide historic preservation plan;
(D) Administer the State program of Federal assistance for historic preservation within the State;
(E) Advise and assist, as appropriate, Federal and State agencies and local governments in carrying out their historic preservation responsibilities;

(F) Cooperate with the Secretary, the Advisory Council on Historic Preservation, and other Federal and State agencies, local governments, and organizations and individuals to ensure that historic properties are taken into consideration at all levels of planning and development;

(G) Provide public information, education, and training, and technical assistance in historic preservation;

(H) Cooperate with local governments in the development of local historic preservation programs and assist local governments in becoming certified pursuant to subsection (c) of this section;

(I) Consult with the appropriate Federal agencies in accordance with this Act on—
   i. Federal undertakings that may affect historic properties; and
   ii. The content and sufficiency of any plans developed to protect, manage, or to reduce or mitigate harm to such properties; and

(J) Advise and assist in the evaluation of proposals for rehabilitation projects that may qualify for Federal assistance.

Other SHPO responsibilities include public education, working with the Secretary of Interior and Advisory Council on Historic Preservation, federal, state, and local agencies, and other individuals to make sure properties are taken into consideration in planning and development, cooperate with and assist local governments, and advise and assist in the evaluation of proposals for rehabilitation projects (King 2004, National Park Service 2016, State Historic Preservation Office 2016). On Indian lands, the SHPO acts as a liaison, and consults with the tribal liaison.

Due to the amendments made to the NHPA, tribes have become more active in archaeological consulting and contracting. After the 1976, 1980 and 1992 amendments were incorporated into the NHPA, tribes had a stronger voice in the protection and preservation of their cultural heritage. Federal agencies were required to consult with tribes about projects occurring on/within their aboriginal homelands.
This created a role for tribal cultural heritage management for the first time, in which tribes are able to incorporate their beliefs and values into how their heritage is protected and preserved for their communities (i.e. gender specific artifacts/sites, recording via pictures are prohibited for specific items, etc.) within this federal framework. By doing so, they are able to protect and preserve material links to their present, living cultural identities (Smith 2004).

_Tribal Historic Preservation Offices (THPOs)_

In 1992, amendments were made to the National Historic Preservation Act (NHPA) to include provisions for Indian tribes to assume some, or all of the responsibilities of the State Historic Preservation Officer (SHPO) on tribal lands, and establish the position of a Tribal Historic Preservation Officer (THPO). Section 101(d)(2) of the act allows federally recognized tribes to apply to the Department of the Interior (DOI) to assume the responsibilities of a SHPO on their tribal lands. “Tribal lands” (from NHPA), is defined as all lands within the exterior boundaries of any Indian reservation, and all dependent Indian communities.

The 1992 NHPA amendments, Section 101(d)(2) states:

(2) A tribe may assume all or any part of the functions of a State Historic Preservation Officer in accordance with subsections (b)(2) and (b)(3) of this section, with respect to tribal lands, as such responsibilities may be modified for tribal programs through regulations issued by the Secretary if--

(A) The tribe's chief governing authority so requests;
(B) The tribe designates a tribal preservation official to administer the tribal historic preservation program, through appointment by the tribe’s chief governing authority or as a tribal ordinance may otherwise provide;
(C) The tribal preservation official provides the Secretary with a plan describing how the functions the tribal preservation official proposes to assume will be carried out;
(D) The Secretary determines, after consultation with the tribe, the appropriate State Historic Preservation Officer, the Council (if the tribe proposes to assume the functions of the State Historic Preservation Officer with respect to review of undertakings under
section 106 of this Act), and other tribes, if any, whose tribal or aboriginal lands may be affected by conduct of the tribal preservation program—
  i. That the tribal preservation program is fully capable of carrying out the functions specified in the plan provided under subparagraph (C);
  ii. That the plan defines the remaining responsibilities of the Secretary and the State Historic Preservation Officer; and
  iii. That the plan provides, with respect to properties neither owned by a member of the tribe nor held in trust by the Secretary for the Benefit of the Tribe, at the request of the owner thereof, the State Historic Preservation Officer, in addition to the tribal preservation official, may exercise the historic preservation responsibilities in accordance with subsections (b)(2) and (b)(3); and
(E) Based on satisfaction of the conditions stated in subparagraphs (a), (b), (c), and (d), the Secretary approves the plan.

Application Process

For a tribe to have a preservation official be formally designated as a Tribal Historic Preservation Officer (THPO), they must follow a specific process. The tribal official applying to become a THPO must submit an application form (see NPS 2016c, Appendix C) and a program plan that describes how the THPO will administer and carry out the historic preservation functions they intend to assume, with an emphasis on the National Register nomination process; consultation with Federal agencies pursuant to Section 106 of the NHPA; and review of proposals for rehabilitation of historic properties (NPS 2012, see Section 101(b)(3) of the NHPA).

Along with the applications, the tribe must submit a request to the National Park Service (NPS) (acting on behalf of the Secretary of the Interior) to assume historic preservation functions on tribal lands. This request must be a written resolution adopted by and signed on behalf of the tribe's chief governing authority. The resolution must contain information about how the Tribe will include professionally qualified individuals in its program, how they will include adequate
and qualified review board in its program, and how they will provide for adequate public participation in its program.

The NPS will then review the program plan and decide whether to approve it or not. During this process, the NPS will consult with the appropriate SHPO, and other tribes whose traditional homelands may be affected to clarify any ambiguities and deficiencies in the program plan. This is a time consuming process, but once it is approved, the Tribal Chairperson and the Director of the NPS (on behalf of the Secretary of the Interior) both sign the THPO agreement. This indicated the tribe’s official to have THPO status and recognition under NHPA to administer and carry out the historic preservation functions they outlined in their program plan.

*Historic Preservation Fund*

In Section 101(d)(3)(B) of the NHPA, it provides that direct grants from the Historic Preservation Fund (HPF) be made to “Indian tribes... for the preservation of their cultural heritage.” The Secretary of the Interior is authorized to award matching grants to states; administer a program of matching grants to the states for the purpose of carrying out the NHPA; and award matching grants to the National Trust for Historic Preservation (NPS 2016b). Native Americans/Alaska Natives and Native Hawaiian organizations are able to apply for grants to assist in protecting and promoting their cultural heritage and traditions. Grant applications for the Historic Preservation Fund are due by end of March every year.

The HPF was established in 1976 to support the NHPA mandates. To do so, Congress deposited a small portion of the Outer Continental Shelf (OCS) lease revenues into the HPF to aid in the preservation and protection of cultural
properties. This was done so that funding wouldn’t come from taxpayer dollars, but from offshore oil and gas revenues, making the extraction of oil have a positive impact for natural resource preservation (NPS 2016c). According to the National Conference of State Historic Preservation Officers (NCSHPO 2016), the HPF receives a deposit of $150 million in OCS oil lease revenues annually. Figure 1 shows the HPF amount appropriated by Congress through the annual appropriations process from 1977-2014. As shown, the HPF does not receive the $150 million that congress is supposed to deposit. In 2001, the HPF received the highest deposit at just over $90 million. Since then, Figure 1 shows that the amount deposited has steadily decreased, with a slight increase in 2009 with a deposit of approximately $80 million.

*excludes $128 million in combined supplemental funding provided in different years for natural disaster relief and jobs creation

Figure 1 Historic Preservation Fund appropriation by Congress 1976-2013 (NCSHPO 2016)
The NPS reports that since 1990, over $21.8 million has been awarded to approximately 593 projects in American Indian, Alaska Native, and Native Hawaiian communities. In 2013, a total of $645,351 was awarded to 17 communities to help fund historic preservation projects (NPS 2013). Figure 2 illustrates the total funds allocated from the HPF to SHPOs and tribes from fiscal year 2010 to fiscal year 2017. On average, SHPOs receive on average $46 million and THPOs receive approximately $8 million a year. On average, each SHPO receives $920 thousand a year for preservation projects/programs. The number of SHPOs is non-changing, but each year, more NPS THPOs are created.

As seen in Figure 3, there were 100 THPOs in 2010, with an average award of $72,500 ($7.25 million total). In fiscal year 2015, the average award was $56,646, and a total of 157 THPOs. From Figure 2, the SHPOs received $46,925,000 (split between all 50, this is an average of $938,500/SHPO). Due to this increase in THPOs, there is a decrease in funding awarded per THPO, which causes tribes to compete against one another for federal aid.
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* Financial information found at the National Park Service website: http://www.nps.gov/ths/park-historical/bast-grants.html
# House language: "...provides $47,425,000 for SHPOs, of which $500,000 is for grants to underserved communities..."

"Competitive Grants to Preserve the Sites and Stories of Civil Rights in America"
To be eligible for a THPO HPF annual award, a tribe must have:

- An approved THPO via the NPA agreement;
- An acting Tribal Historic Preservation Officer;
- No outstanding prior HPF grant reports, problems, or audit findings;
- No outstanding compliance issues under the THPO Partnership Agreement;
- And no other issue that would legally bar the tribe from receiving Federal funds (NPS 2016c).

Once eligibility is determined, the funds awarded must be used for one of the following activities:

- Locating and identifying cultural resources;
- Preserving a historic property listed on the National Register;
- Preservation planning;
- Oral historic and documenting cultural traditions; and
• Education and training projects in historic and cultural preservation.

Notifications are sent to chief elected officials of all Federally recognized Indian tribes and Alaskan Native groups, all Tribal Historic Preservation Officers, all State Historic Preservation Officers, and to others (including Native Hawaiian organizations), announcing the grant application and guidelines. Upon the due date, a panel of experts consisting of employees of the NPS, ACHP and the Smithsonian Institution meet to review the applications. Applications are evaluated on:

1. What critical preservation issue does the project address and how well does it address it:

2. Are the project objectives and activities reasonable and achievable? This is evaluated in three areas: time (is there enough time allotted to each task/activity?), personnel (for each task/activity, are project personnel appropriate and qualified?), and budget (are the budget items reasonable and justified?).

3. Is there a demonstrable commitment to the project by the tribe? Is the tribe donating any funds, staff time, or overhead/indirect costs?

4. Will there be a lasting impact and benefit to the tribe if this project is successfully completed?

Other funding opportunities can be found at:

Preservation Programs

In a study conducted by the National Park Service in 1990, language was seen as central to preserving tribal cultural heritage. Unfortunately, many American Indian languages are at risk of being lost, even with the current tribal language programs in place (Parker 1990). The study also found that cultural preservation activities that revive and enhance traditions, such as tribal arts (dancing, weaving, music, story telling, etc.), build self-esteem, which in turn, strengthens the community’s resistance to social problems (alcoholism, drug abuse, suicide, domestic violence, etc.) (Parker 1990).

Most tribes believe that their tribal concepts should also be integrated into all tribal related preservation efforts. There are standards that non-Indians may not understand when it comes to the protection and preservation of their (Native American) heritage. Not all of their ancestral lands are located on tribal lands, so being involved with other federal agencies to gain access and continual use of these areas is integral to the practice of Native traditions and cultural values. This open line of communication is another important aspect to these programs.

Overall, tribal programs do a multitude of things, such as preserving and transmitting language and oral tradition, arts and crafts, and traditional uses of plants and land; to maintain and practice traditional religion and culture; to preserve sacred places; to record and retain oral history; to communicate aspects of tribal culture to others; and to use cultural resources to maintain the integrity of communities and advance social and economic development (NPS 1990).
**Oregon THPOs**

Currently, there are six federally recognized Tribal Historic Preservation Offices in Oregon: (1) The Confederated Tribes of the Coos, Lower Umpqua and Siuslaw Indians, (2) the Confederated Tribes of Grand Ronde, (3) the Confederated Tribes of the Umatilla Indian Reservation, (4) the Confederated Tribes of the Warm Springs Reservation, (5) the Coquille Indian Tribe, and (6) the Cow Creek Band of Umpqua Tribe of Indians. This study will focus on the three Oregon THPOs that were able to participate, and their experiences in applying to be a federally recognized THPO, and the challenges they have faced, and are currently facing. The goal of this research is threefold:

- to understand the challenges that these tribes faced when they first began the process of creating their THPO,
- to find ways to make starting and operating a THPO less challenging, and
- to understand how they measure success such as: budget size, staff size, educational outreach, preservation programs, percent of consultations they've participated in vs. number of consultation requests they have received.

This research will enable other tribes to establish their own THPOs, and to also help improve the success rates of the 158 THPOs in the United States.
Chapter 2: Methods

After receiving the Institutional Review Board’s approval at The University of Montana, all Oregon tribes with a THPO were contacted in spring 2015 to participate in this research. Oregon THPOs were chosen due to the lack of research in the area and the authors’ connections to the tribes. Of the six THPOs contacted, two current THPOs agreed to participate (the Confederated Tribes of Grand Ronde Indian Community and the Cow Creek Band of Umpqua Tribes of Indians), and the first THPO of the Confederated Tribes of Grand Ronde Indian Community.

Interview Process

These case studies are used to learn and understand the challenges that Oregon tribes face when starting and maintaining a Tribal Historic Preservation Office under the National Park Service and 1992 amendments to the National Historic Preservation Act. The data collected for this study is examined from the background research analysis and ethnographic interviews with the two Oregon THPOs and a past Oregon THPO. By utilizing these two data sets, the historical and contemporary challenges experienced in the past and currently, will help to pinpoint the recurring challenges that they face.

Interview Structure

The researcher conducted interviews with the three individuals in a semi-structured interview, affording flexibility in the interview process. This structure has four advantages:
1. A semi-structured interview provides a guide of cultural themes, topics and specific inquiries which are designed to obtain significant information relevant to the study;

2. This structure ensures the quality of the data by eliminating unnecessary information in the data collection and analysis;

3. The method allows the interviewee to volunteer information beyond the interview guide that they may deem important; and

4. This technique empowers the interviewee through active participation in the interview process (Guyette 1983, Strauss and Corbin 1991).

The interview questions (Appendix C) are designed to map out the cultural parameters of the interview. The questions allow the Officers to introduce themselves, explain their cultural relationships, and explain why they are qualified to speak about specific cultural issues concerning their tribal office. The interviews conclude with an open-ended question to allow the officers to confer new information and not impose upon their personal thoughts and opinions directly related to this study’s research question.

Two of the interviews occurred via phone conference, and averaged approximately one hour in length. The third interview occurred in person at the tribal office and was approximately 45 minutes. All participants were told the interview would be recorded, be approximately one hour in length and that a follow-up interview would take place end of August. None of the participants could be contacted for a follow-up.
**Data Analysis**

Upon completion of the three interviews, the recordings were transcribed to compare and contrast the experiences of the two THPOs and the past THPO. These similarities and differences are incorporated into the pre-THPO and post-THPO sections of the proceeding chapter, and further discussed and analyzed in chapter 4.
Chapter 3: Results

The results of the interviews were integrated into a narrative for the two case studies. For each tribe in the study, this chapter begins with a brief description of location and geography, relevant historical context, and their early formal cultural heritage preservation efforts, and current THPO operation.

Confederated Tribes of Grand Ronde Indian Community

The Confederated Tribes of Grand Ronde Indian Community reservation was established by treaty on June 30, 1857 (Wilkinson 2010). The Grand Ronde reservation has a land area of approximately 16 sq. miles, and the tribal ancestral lands averages around 6 million acres (Harrelson 2016), ranging from present-day western Oregon between the western boundary of the Oregon coast, to the eastern boundary of the Cascade Range, the northern boundary of southwestern Washington, to the southern boundary of Northern California.

Originally, the reservation consisted of 69,000 acres, but by 1901, was reduced to approximately 43,000 acres through the Dawes Act and other government-sanctioned policies discussed previously. In 1954, the Grand Ronde tribe was terminated, leaving the tribe nearly landless, with the exception of a 5-acre cemetery (Archives & Museum Informatics 2010).

In 1974, during the Tribal Self-Determination Era, a group of the tribal members began efforts to restore their federal recognition, which was granted in November 1983 (Archives & Museum Informatics 2010, Wilkinson 2010). By 1988, 9,811 acres were granted back to the tribe and has grown to 11,040 acres today (Archives & Museum Informatics 2010, Confederated Tribes of Grand Ronde 2016).
In 1997, the Confederated Tribes of Grand Ronde Indian Community (henceforth ‘CTGRIC’) established a ‘Cultural Resources Department’ that follows the resolutions and needs of the tribal community. This program focused on historical research, genealogy and what they refer to as ‘cultural continuity’ with cultural education, which focuses towards building a language immersion program (still in operation, but within the education department of the tribe) and also teaching cultural activities/practices to the tribal youth.

To spearhead the Cultural Resources Department, the Grand Ronde tribe hired a Cultural Protection Specialist (Eirik Thorsgard), who was approached by his supervisor at the time to consider writing a Master’s thesis on the policy and
procedures for the implementation of a recognized NPS THPO. After agreeing, Thorsgard then proceeded to gain support from the tribal council in applying to the National Park Service to become a recognized and functioning Tribal Historic Preservation Office.

Thorsgard completed his M.A. thesis and consulted with the National Park Service Tribal Historic Preservation Program (NPS THPP) Chief and the Grand Ronde tribal council. Over the course of eight months, Thorsgard continued consultation with the Tribal council and the NPS THPP, worked on the THPO application to meet the tribal council’s legal standards and then worked with the council on submission once it had cleared these standards. Consultation with the NPS THPP was difficult due to the lack of timely feedback, specifically on the requirements of Sections 106 and 110 of the NHPA. Section 106 of the NHPA requires a federal agency to consult with the communities that attach religious or cultural significance to the affected property (§302706(b) and to consider the effect of its “undertakings” on property of historical significance, which includes property of cultural or religious significance to Indian tribes (§306108, 302706(b)). Thorsgard consulted with other THPOs whose applications had been accepted to prepare the Section 110 and 106 requirements. The NPSTHPP also sent redacted versions of other THPO applications. With these documents, Thorsgard was able to complete the application, which was then accepted. On June 17, 2009, Eirik Thorsgard was the designated Tribal Historic Preservation Officer of the Confederated Tribes of Grand Ronde Indians. By late 2009/early 2010, full THPO status was achieved.
At first, the THPO (referred to as ‘Office’) focused on Section 106 obligations on and off the Grand Ronde reservation. The Office dealt with the identifying and mitigation of impacts to archaeological sites that are connected to the community. With THPO status, there came additional funding that the Office received by applying through the HPF. These grants are to aid the Office in completing the duties assumed from the SHPO, with a tribal match. With this funding, Thorsgard was able to hire David Harrelson, who later assumed the role of Tribal Historic Preservation Officer and Program Manager, and Breice Edwards, who became the Senior Archaeologist.

With the additional hires, the Office was able to designate responsibilities to the additional staff. At this time, the Office would receive approximately 5,000 project notifications in compliance with Section 106 requirements per year.
this influx of requests, there was a need to prioritize which projects that needed the most attention. In response, the Office developed a Geographic Information System (GIS) to track notifications and help prioritize those that had the most effect on cultural properties. Unfortunately, the GIS system is time intensive, and so they can only selectively use it for the notifications that are received. The program is only used when they believe that a particular project will have a significant impact, and requires their full attention.

According to Harrelson, the functions of the Office have not changed significantly since receiving THPO status through the NPS as they were already conducting the functions of a THPO. The major differences for the tribe between their THPO and pre-THPO status is that they now qualify for additional grants and that there was an exponential increase in consultation requests due to their title and new responsibilities they chose to acquire from the Oregon SHPO.

Cow Creek Band of Umpqua Tribe of Indians

The Cow Creek Band of Umpqua Tribe of Indians (CCBUTI) is located in Southwestern Oregon (Cow Creek 2016). They inhabited the lands from the Willamette Valley to the north, to Crater Lake and the Klamath marsh area to the east, as well as reaching as far west as the Coast Range, and south through the Rogue River Watershed into the Siskiyous (Cow Creek 2016).

In 1853, the tribe signed a treaty with the United States of America, that ceded more than 800 sq. miles of their ancestral lands (Cow Creek 2016). The U.S. government paid the tribe $12,000 for the land, and a temporary reservation was created and located in southwestern Oregon. The tribe was also promised health
care, housing, and education; however, this was not fulfilled (Cow Creek 2016, Wilkonson 2010).

By the Termination Era, the tribe faced termination, but had not received a notification of the 1954 act (Cow Creek 2016). Because of this, they were able to make a land claims case to the U.S. Court of Claims in 1980, and negotiated a settlement of $1.5 million (Cow Creek 2016). Federal recognition was granted to the tribe on December 29, 1982 (Beckham 1977). Today, this settlement is an endowment, which the tribe uses for economic development, education, and housing that they were denied by the federal government (Cow Creek 2016). Because the tribe had never received their promised reservation, they have been buying back their lands, piece-by-piece, and have approximately 1,200 acres held in trust (Cow Creek 2016).
When she started, Jessie Plueard was the Cultural Programs Manager for the Cow Creek Band of Umpqua Tribe of Indians, beginning March 2009. Prior to gaining THPO status, the Archaeology department was and continues to be located

*Pre-THPO*
within the Natural Resources Department. Here, Plueard and the staff focus on
cultural education, cultural continuity, and language emersion.

In 2011, Plueard approached the Natural Resources Department Supervisor
to gain support in proceeding to the tribal council in the creation of a recognized
THPO. Plueard and her supervisor then proceeded to explain why it would benefit
the tribe if they participated in the NPS THPP. The idea was brought to the
community, where some opposition occurred. Due to the history of federal-tribal
relations, some of the elders saw the program as a way for the federal government
to gain more control over their cultural heritage and thus, a loss of tribal
sovereignty (Plueard 2016). The state had never been involved with the resources
on their tribal trust lands aside from Section 106 projects and the community did
not understand why it would be beneficial to start. Plueard acknowledged their
worries, but believes that by participating in the NPS THPP, they would then be able
to exert more authority over their cultural resources, and thus gain more
sovereignty with the addition of more grant opportunities to help protect their
heritage (Plueard 2016). For Plueard, it was the logical step in furthering the
protection of the community's cultural heritage.

After gaining the support of the Tribal council (Board of Directors), a tribal
resolution was drawn up and passed to authorize Plueard and the Natural
Resources Department to proceed with the NPS application process. While working
on the application, Plueard came across challenges similar to Thorsgard: NPS was
slow in fulfilling their role as overseer in the application process and the language
pertaining to how the tribe will fulfill Section 106 and Section 110 of the NHPA was
unclear. It took a total of ten (10) months of verbal and non-verbal communications with the NPS and other THPOs (specifically the Grand Ronde and Confederated Tribes of Coos-Lower Umpqua and Siuslaw Indians THPOs) to complete the application to the standards of the NPS and tribe.

Once the standards of the NPS and tribal community were met, Pueard completed and submitted the application package to the NPS of June 2012. The tribe was officially approved in February 2013. As a Federally recognized THPO, Jesse Plueard accepted the responsibilities of overseeing the protection, preservation, and perpetuation of Tribal history and culture of the Cow Creek Band of Umpqua Tribe of Indians.

Figure 7 CCBUTI Natural Resources Department flow chart
Post-THPO

After achieving THPO status with the NPS, Plueard was the Tribal Historic Preservation Officer and the tribal archaeologist. While the Tribal Historic Preservation Office (henceforth referred to as ‘Office’) was still relatively new, Plueard used the funding grants she applied for to help build the program into something larger than working alone. However, the funding was not enough to cover one full time persons' salary and benefits; that meant that she had to be the sole person of contact in conducting Section 106 consultation. The tribal ancestral territory is over 6 million acres, which forced Plueard to conduct a “cultural resource triage” (Plueard 2016). The biggest projects, or the projects that had the largest impacts were the priority and the smaller projects rarely received the attention that was needed. The Office received on average 1,000 Section 106 consultation requests a year, and approximately 100 were not specifically related to Section 106 requirements.

Plueard was the sole provider in conducting the duties and responsibilities of the Office with the exception of two (2), on-call tribal monitors. These individuals are usually working full time in the summer field season, but usually have a month or more off during the winter when monitoring is not possible due to poor ground visibility. This was a problem in that this work is unstable, which makes it difficult in finding individuals who are qualified to commit to unsteady work.

It was not until April of 2016 that an individual that met the Secretary of Interiors standards as an archaeologist was hired to backfill Plueard’s position as
the tribal archaeologist (Plueard 2016). With this addition, Plueard can better fulfill the responsibilities that the Office obtained from the Oregon SHPO.

With the expansion, Plueard was able to plan for the future and created a five (5)-year strategic plan with the Tribal Board of Directors. In this plan, the tribe and Office aim to grow and carry out their responsibilities to their community in a more efficient way. They believe reaching two important goals can do this:

1. By reaching out to county and local governments, non-profit agencies, and other non-federal agencies, they hope to educate them on what cultural resources are, and the importance of conducting Section 106 consultation in an efficient and inclusive partnership; and

2. Conduct tribal archaeological contract work. This would help generate an income that would aid the Office in growth and help create stable jobs for the community.

Plueard believes these two goals would positively impact the community in three major ways. One major impact is that by educating the outside communities, the Office helps create a safe learning environment for educating those on what THPO’s do, what cultural resources are, and what the laws in place can do for the tribal community. Education can also help the community become aware of their heritage that they may not have known of. By creating this safe learning environment, the youth can become more educated in their heritage and become more involved in their cultural traditions and practices. This involvement could also help in better management of the tribes’ cultural resources.
With the ability to generate revenue, the Office would also be able to provide more stable jobs to the community in the protection of their heritage. Plueard and Harrelson both note that because of the unreliability of being able to provide stable jobs with benefits, those who are qualified tend to find jobs outside of the community (Harrelson 2016, Plueard 2016).
Chapter 4: Recommendations and Discussion

When first beginning the process to develop a THPO, tribes must have individuals who believe that they are able to take on the responsibility of applying to the NPS THPP. These individuals must be able to gain the support of their tribal community, who must be willing to listen and understand the power of a THPO along with the limitations. Once they are satisfied and believe that a THPO would be beneficial, and then a tribal resolution can be drawn up and passed.

Both tribes considered here already having a program similar to the NPS THPP in place and had a framework developed for the protection of their heritage in accordance with their tribal values. When examining the two tribes pre- and post-THPO, a correlation can be seen in the following areas: the NPS THPP application process, funding, consultation, and workload.

Application Process

When both tribes elected to participate in the NPS THPP, there were similarities in the challenges they experienced. The NPS THPP had not, at the time, created an application that could easily be completed without constant consultation between the applicants and the NPS THPP. Both tribes had to consult other tribes that had successfully completed the application process to understand what the NPS THPP was looking for in the application. More specifically, there was confusion as to how the tribe would fulfill the requirements of uphold the Section 106 and Section 110 requirements.
Currently, there are guidelines in place to aid tribes in filling out the application (NATHPO 2005 and 2016, NPS 2012). There is also the National Association of Tribal Historic Preservation Officers was created to support tribes when they are attempting to develop their own THPO on accordance with the NPS THPP (NATHPO 2016b). Plueard helped in developing a guide that the NATHPO has promulgated for aiding tribes with the application and the organization provides technical assistance to tribes and THPOs in the protection of their heritage and cultural practices (NATHPO 2016b, Plueard 2016).

**Funding**

With the increase in tribes participating in the NPS THPP, the HPF causes tribes to compete against one another for funding to aid them in complying with the responsibilities they have assumed from the SHPO. As seen in Figure 8, the HPF continues to remain static, or decreases while the number of THPOs participating in the THPP increases. In the first year of congressional funding support for THPOs (FY1996), the original 12 THPOs each received an average of $83,000/THPO (NATHPO 2016c). As of March 2016, there are 167 THPOs, and an expectation of there being 175 THPOs in 2017 (NATHPO 2016c). If all expected tribes were to receive the average grant amount from 1996, then Congress would have to appropriate more funding than is allocated in the current political environment.

Tribes choose to participate in this program for a number of reasons, but if there is no financial support for them when they choose to comply with the federal standards, then how can they uphold the responsibilities they've assumed? If federal
funding cannot be attained, there is the possibility of another funding source as discussed in the interview with David Harrelson (2016).

Harrelson mentioned that there are funds created from the Indian Gaming revenue of the tribal casinos in Oregon. According to the individual agreements in place between the Oregon tribes and the state of Oregon, all tribes must allocate 5-6% of gaming revenue into a ‘community benefit fund’ that is accessible to other tribes and local governments (BIA 2006a and 2006b). In 2006, tribal run casinos in Oregon made revenue of approximately $578.5 million and allocated approximately $13.6 million to state and local governments in accordance with the agreements in place (Meister 2007). If just 10% of what had been allocated to state and local governments is made available to all tribal historic preservation programs, then the six federally recognized tribes would have access to an additional $1.36 million. If this sum were to be divided equally, then all six tribes could have access to approximately $226,000 to aid in their cultural preservation/protection programs.
Consultation

Though not construed as a “major issue” with all three interviewees, consultation was still mentioned as a challenge that is in need of assistance, particularly when applying to the NPS THPP and in building a relationship with other agencies and local governments.

The Secretary of the Interior’s Standards and Guidelines (1998) defines consultation as “the process of seeking, discussing, and considering the views of others, and, where feasible, seeking agreement with them on how historic properties should be identified, considered, and managed.” From this, there are four parts to consultation: (1) seeking, (2) discussing, (3) considering, and, (4) where feasible, seeking agreement.
To seek the views of others, one must identify and engage these other parties who are involved in an area’s cultural heritage, be it tribal, the local community, or the scientific community (King and Nissley 2014). King and Nissley stress the importance of holding public hearings, posting notices for the public, and realizing that it is never too early to start involving other parties (King and Nissley 2014).

When a project is considered a federal undertaking the SHPO is contacted before the THPO or tribes without a THPO. The SHPO is thus the “middle-man” and delegates which tribes are necessary to consult via section 106.

Consultation Process

Section 106 of the NHPA requires a federal agency to consult with the communities that attach religious or cultural significance to possibly affected properties and to consider the effect of its “undertakings” on properties of historical significance. The Advisory Council on Historic Preservation is charged with passing regulations to govern the implementation of Section 106. Under them, the agency must determine whether the project is a ‘federal undertaking’, and if so, if the project could have adverse effects on historic properties. If the agency decides that there is no undertaking, or the undertaking has no “potential to cause effects on historic properties,” the Section 106 process is complete and no consultation is needed.

However, if it is not up to the agency to make this determination, the agency must complete a multi-step “consultation” process before the issuance of the permit(s). When tribes “attach religious and cultural significance to historic properties” that may be affected by the undertaking, they must be consulted and
given a *reasonable* opportunity to voice their concerns and to advise on the
identification and evaluation of properties and to “participate in the resolution of
adverse effects.” Furthermore, the agency is to conduct these consultations “early in
the planning process” in a “sensitive manner respectful of tribal sovereignty.”

Regulations by the Secretary of the Interior and the Advisory Council on
Historic Preservation create a step-by-step consultative process that begins with
initial planning. Here, the agency contacts the SHPO, which then determines and
documents the area of potential affects, reviews existing information on the historic
properties within the area, seeks information from consulting parties, and gathers
information from any consulting tribes to assist in identifying properties of
potential significance to them. The information gathered from these consulting
parties aids the agency in taking the steps necessary to identify historic properties
within the area of potential effects.

Once the sites are identified, the agency moves on to evaluate the historical
significance of these sites in consultation with the SHPO and tribes. If it is found that
there are no historic properties in the project area, consultation is no longer
necessary. If historic properties are found, but there will be no possible effect, they
are then documented and all consulting parties are notified. If an adverse effect is
possible, the NHPA requires that the agency consider the potential effect of the
activity prior to issuing a permit.

*Consultation Challenges*

There are many challenges that tribes face when it comes to the Section 106
consultation process. The first is that if there are no historic properties in the
project area then no consultation is required, as seen in *Native Americans for Enola v. U.S. Forest Service* in 1993. This ruling is troublesome because of the history between the federal government and tribal peoples, there is still much unknown about the landscape and tribal relations to the landscape, which is why a background check and surveying is required within the area of potential effect.

A second challenge that tribes face is that their involvement is not necessary if the federal agency finds that there is no possible effect on the historic properties. In *Morongo Band of Mission Indians v. FAA* in 1998, the Morongo Band attempted to initiate the Section 106 consultation process, but due to the FAA’s findings of no possible effects on historic properties, no consultation occurred.

A third unfortunate consequence of the process is that a tribe may be forcibly precluded from consultation (Alexander 2012). In 2009, the Aquinnah and Mashpee Wampanoag tribes became aware of a Cape Wind Associates project of the creation of a wind farm in the Nantucket Sound (Shroeder 2010). The tribes wanted Nantucket Sound to be declared a traditional cultural property, but the developers protested against this, declaring that tribal input would curb and eventually halt development (Schroeder 2010). The then Secretary of the Interior Ken Salazar met with the tribes and project stakeholders and released a final Record of Decision and Lease to Cape Wind in April of 2010, declaring that no consultation was required with the tribes (Schroeder 2010).

There is also the timeliness of consultation requests. Agencies are allowed to set deadlines as to allow tribes to answer a consultation request. In *Fallon Paiute-Shoshone Tribe v. U.S. B.L.M.* in 2006, the tribe was given a 45-day deadline to
respond to the BLM's final determination of non-affiliation to human remains that was without statutory or regulatory support, and against the procedures of law required by the Native American Graves Protection and Repatriation Act. Even though there is a need to ensure the timely and proper disposition of consultation, both tribes studied are almost always working through hundreds, if not thousands of consultations requests per year. Deadlines imposed to maintain timeliness and efficiency of resources become a hardship for tribes attempting to protect their cultural heritage and traditional practices and religion.

![Figure 9. Section 106 Consultation chart (King 2013)](image_url)
Successful Consultation

Because there are multiple sides of consultation it is necessary to examine what each side may deem “successful” consultation. The ACHP (2012) and NATHPO (2005) both agree that respect is an essential practice and tool when it comes to consultation. This can be seen as mostly directed towards the federal side due to the past history, but the tribal side must also take into account the differences between people within the federal sector. Success is most likely when individuals are sensitive and mindful of the different protocols, customs, and history, and do not voice opinions aimed at telling others what would be best for them.

In the NATHPO (2005) study, they found that according to tribes, one of the best ways to have a successful consultation is to communicate and provide information early. By contacting all tribes along with the SHPO, the project lead time allows tribes to be a part of the planning process and that their input is demonstrated to be important. Reaching a final agreement should not be a goal, but being present for all meetings, site visitations, participating in the decision-making process is necessary in developing channels of communication and establishing a relationship for future projects.

In the NATHPO (2005) study, when early contact was not occurring, the agency had an immediate, critical issue needing prompt resolution, whereas, when the tribe was contacted early, there was adequate time for a resolution. If there is a liaison, then consultation appears to occur early in the project planning process, which leads to an exchange of information in a timely fashion, making it easier to reach a Memorandum of Agreement.
Discussion

Having the federal recognition of a Tribal Historic Preservation Office gives tribes more authority over their cultural heritage and resources. In the case studies, the individuals advocating for THPO status gained tribal support by believing that they would gain more tribal sovereignty, particularly over their cultural heritage sites on tribal and ancestral lands. The title, though official and fancy, does appear to give tribes more power. The downside to this title and recognition is that it follows the parameters set by the federal agency rather than the tribal values. As seen in the case studies, tribes are more than capable of creating their own historic preservation departments without the federal recognition of the NPS and 1992 amendments to the NHPA.

Due to these relatively new amendments, tribes do surrender some of their sovereignty to the federal agency by complying in accordance to the federal standards and guidelines. Tribes must also report on how they are upholding the responsibilities they have inherited from the SHPO and when funding is received, the tribe must use the funds in accordance to the federal agency requirements.
Chapter 5: Conclusion and Future Research

After reviewing the interviews with three Oregon Tribal Historic Preservation Officers and examining the history of the federal preservation frameworks, it is clear that there is a disconnect between federal and tribal historic preservation. There have been numerous meetings and conferences revolved around consultation procedures, studies conducted to examine the historic preservation program in place and yet, there continues to be difficulties. The Historic Preservation Fund was created to aid in the preservation of archaeological sites and the heritage of communities, yet what is allocated, is not enough to support tribes in the creation of a THPO. SHPOs are allocated annual grants to operate due to the NHPA requirements, but THPOs must compete against one another for HPF grants. This makes it extremely difficult for a tribe to build their program and with the positions required by the NPS THPP when the money is available one year, and gone the next.

The goal of applying to the National Park Service Tribal Historic Preservation Program is to help tribes have a stronger voice in the protection of their cultural heritage (Stapp and Burney 2002). Prior to European contact, tribes had been protecting their heritage and managing their resources according to their own values. It was not until the colonists came and the United States of America was formed that tribes needed the 1992 amendments to the NHPA that allowed tribal governments to apply for a federally recognized THPO and have a legal right to how to protect their heritage sites. What the tribes had created followed their community's values and traditions, but with these amendments, came a few
incentives. A fancy title, continued improvements in consultation and more federal funding appear to be what the NPS THPP provides. Upon examination of these ‘perks’, it is clear that tribes also face a number of challenges.

THPO's are overwhelmed with the number of consultation requests, and are understaffed and underfunded. Tribes must balance support of a THPO with the needs of providing social services to their community. As mentioned, there is the Historic Preservation Fund that provides grants to THPO's, but because the funding does not increase with the increase of THPO's, tribes are forced to compete against one another for grant monies. Then there is the added tribal match that can be required, which causes a stress on the tribal communities. This can cause tribes to pick and choose which programs they can maintain, and just like with the federal government, funding is frequently cut from historic preservation. This then causes THPOs to cut positions needed to help them perform their duties and responsibilities. Those tribal members who are qualified to uphold these duties and responsibilities then chose to leave the community in pursuit of a more stable job opportunity.

The question that is most important to this study is: how does the designation of a federally recognized NPS THPO affect tribal communities? It is shown that tribes are more than capable of protecting their heritage and cultural resources without the THPO designation, but because of the colonialistic framework of the federal government, tribal communities believe that this designation is necessary to have more power in the protection of their heritage and cultural areas.
It is recommended that further ethnographic fieldwork be completed for a more conclusive finding. All tribal communities in the United States should be included to examine the different challenges they face pre- and post-THPO. It would be informative to understand the reasons as to why a tribe would choose to forgo the NPS THPO and continue with the program(s) that are in place.

Tribes have faced a number of challenges throughout history with the federal government, but with studies such as this and the passing of laws as those mentioned, there is a stronger possibility of a decolonized framework that allows for tribes to become more sovereign and legally mandated to protect their culture and heritage according to their values and traditions. Additional research is recommended to support this conclusion, but given what is known about tribes in general, they are more than capable of conducting historic preservation without the NPS THPP.
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Appendix A: SUBJECT INFORMATION AND INFORMED CONSENT

Study Title: Oregon Tribal Historic Preservation Offices: The Problems and Challenges of Starting and Maintaining a THPO

Investigator(s): Karly Law, Graduate Student, The University of Montana, Department of Anthropology, 32 Campus Drive, Social Science Building, Missoula, Montana, U.S.A. 59812, karly.law@umontana.edu, 541-892-1115

Purpose:
- You are being asked to take part in a study about your professional experience working as a Tribal Historic Preservation Officer/Tribal Archaeologist.
- As part of the University of Montana’s (UM’s) Cultural Heritage, Archaeology Graduate Program, I am required to write and defend a thesis. The information you provide in this study will be used to evaluate the hardships that the Oregon Tribal Historic Preservation Offices face, and finding ways to reduce these hardships to help current and future THPOs.

Procedures:
- The talking session(s) includes questions about your professional background and about your interactions with Tribal Government officials and/or about your interactions with National Park Service/Bureau of Land Management.
- The talking session will take approximately one (1) hour.
- Audio tapes and email correspondences collected will be archived with other research from the project at the University of Montana (Social Sciences Building, Room 254A) and will be available for review by subjects at any time.
- At the end of the study, you may have all documentation involving your thoughts and opinions back.

Risks/Discomforts: Discomfort for contributing to this study should be minimal. In some situations, discussing professional problems and challenges can cause anxiety, but the focus of this project is nonjudgmental and on the lessons learned.

Benefits: There is no promise that you will receive any benefit from taking part in this study. All participants will receive a copy of the thesis when it is completed.

Confidentiality:
- Your records will be kept confidential and will not be released without your consent except as required by law.
- If the results of this study are presented in a report, written in a scientific journal, presented at a scientific meeting, or in any
publication (including but not limited to the primary researcher's master's thesis), your name will not be used without your consent.

- Your initials ______ indicate your permission to be identified by name in any publications or presentations.
- If you do not want to be acknowledged by name in any publications or presentations, please initial here ______.

Voluntary Participation/Withdrawal:

- Your decision to take part in this research study is entirely voluntary.
- You may refuse to take part in or you may withdraw from the study at any time.

Questions:

- If you have any questions about the research now or during the study, please contact Karly Law (contact information listed above) by email or by phone.
- You can also contact the UM Institutional Review Board (IRB) at (406) 243-6672.

Statement of Consent:
I have read the above description of this research study. I have been informed of the risks and benefits involved, and all my questions have been answered to my satisfaction. Furthermore, I have been assured that any future questions I may have will also be answered by a member of the research team. I voluntarily agree to take part in this study. I understand I will receive a copy of this consent form.

________________________
Printed Name of Subject

________________________  _________________________
Subject's Signature  Date

Statement of Consent to be Photographed and/or Audio/Visual Recorded:

- I understand that audio/video recordings may be taken during the study.
- I consent to being audio/video recorded.
- I consent to use of my audio/video in presentations related to this study.
- I understand that if photographs/audio/video recordings are used for presentations of any kind, names or other identifying information will not be associated with them without consent.

________________________  _________________________
Subject's Signature  Date
Appendix B:

Waq li$s?i-

My name is Karly Law. I’m a graduate student at the University of Montana, working towards a Master’s thesis on the development and challenges associated with Tribal Historic Preservation Offices (THPOs). I am writing to request an interview with you so that I can learn from your experiences and integrate them into my work.

Through talking with THPOs such as yourself, I am hoping to uncover the challenges Oregon tribes face when beginning the process of establishing their THPO, and the subsequent difficulties and successes they have since encountered. The primary goal is to discover pathways to make the process of establishing and maintaining a THPO less of a challenge and more beneficial to tribes. Because THPOs play such an important role for tribes, I am hoping that this research will be a helpful guide for tribes endeavoring to establish a THPO in the future.

As the THPO/Tribal Cultural Director/Archaeologist, your insight would be extremely valuable. I would like to plan a visit to your office in the near future to conduct a short interview; it should take approximately 1 hour. Your name and responses will remain anonymous unless you choose otherwise. I implore you to consider participating; my thesis will be greatly improved by your wisdom and experiences!

Of course, you would retain the right not to respond to any question you choose. Participation or nonparticipation will not impact your relationship with the University of Montana, Oregon SHPO, National Park Service, Bureau of Land Management, or other Tribes participating.

If you have any questions about my research or the interview, please contact me via email at karly.law@umt.edu. If you have any questions regarding our rights as an interviewee, contact the UM Institutional Review Board (IRB) at (406) 243-6672.

Sepk’ee’c’a

Karly Law
(541)892-1115
karly.law@umt.edu
Graduate Student
University of Montana
Appendix C: Interview Questions

Name: Position/Job:

• What are the reasons this Tribal Historic Preservation Office was created?
• What was the process of establishing this THPO (via the Federal government or Tribal)?
  o How long did it take to get approval and recognition from the National Park Service?
  o In your estimation, how would you measure a successful THPO?
    ▪ How do you measure this THPOs success rate?
• What challenges has the THPO faced in the past? What challenges do you currently encounter:
  o Do you and/or the staff attend trainings put on by other THPOs or Federal agencies?
  o Does this THPO offer any trainings (i.e. Sec. 106 process, Consultation,..)?
  o How much does it cost to fund the office? The programs?
  o Is the office funded by grants? Tribal, Federal, State?
  o What preservation programs does this THPO offer?
• What are the challenges that you foresee in the future (i.e. funding, trainings, consultation, available resources...)? What challenges do you see for other tribes starting the THPO process?
• What impact will the THPO have on the future of your people (i.e. for the tribe)?
• What impact does the THPO currently have for the tribe? For the public?
APPLICATION COVER SHEET

TRIBAL HISTORIC PRESERVATION OFFICER (THPO) PROGRAM

Legal Name and Address of Tribe:

Physical Address (for mail):

Name and Title of Contact Person:

Contact Person’s Address:
Telephone: ( ) -
FAX: ( ) -
E-mail:

Required Documentation to attach to the cover sheet:

I. A signed, written request to assume functions of the State Historic Preservation Office (SHPO) on tribal
lands signed by the Tribe’s chief governing authority.

II. If item I. does not designate the THPO, documentation such as an additional resolution, tribal
ordinance or executive letter of appointment that identifies the THPO and provides their contact information.

III. A program plan that contains the following elements:

1. A descriptive narrative of tribal lands including a copy of Bureau of Indian Affairs (BIA)
documentation that clearly states the total acreage of tribal trust land, and map(s) if the Tribe has lands in
trust outside the reservation boundaries.

2. A description of program staff or consultants needed to provide the THPO with access to individuals
who meet the Secretary of the Interior’s Historic Preservation Professional Qualification Standards.

3. A description of how the Tribe has established an advisory review board to provide advice for the
THPO.

4. An explanation of how the THPO program will provide appropriate participation by the Tribe’s
traditional cultural authorities, by representatives of other Tribes whose traditional lands may now be within
the Tribe’s jurisdiction, and by the interested public.

5. An acknowledgement required by the National Historic Preservation Act (NHPA) that non-tribal
property owners within the boundaries of the tribal lands may request the participation by the SHPO in
addition to the THPO in any decisions pursuant to the Act that affect that property. Note: NHPA has been
re-enacted and codified as 54 USC 301 et seq. but is still commonly referred to as NHPA.

6. A list of NHPA functions the Tribe is proposing to assume.

7. A list of NHPA functions that will remain with the SHPO.

8. A description of how each assumed function will be performed.

9. A description of the Tribe’s current Historic Preservation Program or activities as they relate to the
functions the Tribe is proposing to assume.
General Discussion

A request to assume Historic Preservation Officer functions, (the “proposal”) may be submitted at any time during the year, but the application accompanying a request must be received, approved, and a Memorandum of Agreement (MOA) between the Tribe and the National Park Service signed, by the June 30 date prior to the fiscal year for which the Tribe wishes to enter into the THPO program.

To maximize available time for plan revisions and to facilitate the certification process, NPS encourages the submission of Tribal Historic Preservation Office program applications as early as possible. Annual funding allocations for approved THPO programs are made after the beginning of each fiscal year (October 1).

**Please read the guidelines carefully before starting a draft of the Tribe’s program plan.** Applicants are encouraged to contact the National Park Service’s Tribal Preservation Program Manager to clarify any aspect of the application’s required components or of the approval process. The Tribe may share a rough draft of the proposal (complete with a tribal resolution) for NPS comment to help improve the THPO Program Plan before a formal submission of the request. The Tribe’s submission will be acknowledged upon receipt and a written response provided within forty-five calendar days.

Final approval of a proposal for the Tribe’s assumption of NHPA responsibilities on tribal lands is a signed MOA executed between the Tribe, the National Park Service, and the U.S. Department of the Interior. The Tribe’s THPO Program becomes eligible to apply for federally-apportioned Historic Preservation Fund (HPF) grant monies upon MOA approval. While the THPO HPF grant annual apportionment is non-competitive, the funding must be applied for in a separate application process.

Please submit the Tribe’s THPO proposal in an email to:

thpo_program@nps.gov
INTRODUCTION

On December 19, 2014, under terms of P.L. 13-287, the National Historic Preservation Act (NHPA) was repealed and re-enacted as a part of Title 54 of the United States Code. This legislative action changed some language but did not change the legal meaning of any of the provisions of the NHPA. While the various sections of the old NHPA no longer exist, it is still permissible to use the statement “formerly Section xxx” (Section 106, Section 101(d)(2), etc.) to supplement the Title 54 citation. Because of this change, the National Park Service is reissuing guidance with the most current citations to assist Tribes in applying to become partners in the Tribal Historic Preservation Program. While some of the citations might seem unfamiliar, this action is in keeping with federal policy.

Originally passed in 1966, in 1992 Congress amended the Act and created Section 101(d) to provide that federally recognized Indian Tribes might assume all or any part of the functions of a Historic Preservation Officer with respect to tribal lands. These amendments recognized that the national historic preservation program is strengthened by providing Indian Tribes with the opportunity to be full partners in the program. Tribal assumption of these functions is an exercise of the government-to-government relationship between the United States and the Indian Tribes.

The Historic Preservation Officer functions that a Tribe may assume with respect to tribal land are listed in 54 USC 302303 [commonly known as section 101(b) (3) of the NHPA] and are included in these application materials as Appendix A. For the purposes of this program, “tribal land” is defined in 54 USC 300319 [Section 301 (14) of the NHPA] as:

1. all lands within the exterior boundaries of any Indian reservation; and
2. all dependent Indian communities.

There are several important points to understand about this statutory definition. First, within the boundaries of an existing reservation, the ownership status of the land makes no difference. For this program, a Tribe would assume jurisdiction everywhere within the reservation boundaries. Second, this definition differs substantively from the definition of “Indian Country” found elsewhere in federal statutory law. Specifically, this definition of tribal lands does not include individual allotments held in trust outside existing reservation boundaries. Legal guidance issued to NPS specifies that a Tribe may not assume responsibility for THPO functions on individual allotments outside of reservation boundaries. Third, in contrast to individual allotments, legal guidance affirms that lands held in trust for the benefit of a Tribe outside an existing reservation do fall within the meaning of an “informal reservation” and are considered to be tribal lands for the purposes of this program. Finally, legal guidance to NPS indicates that lands outside an existing reservation that are owned by a Tribe in fee simple but not held in trust are not dependent Indian communities and are not considered to be tribal lands for the purposes of this program.

Definitions of terminology used in this document can be found in 54 USC 3003 – Definitions [formerly Section 301 of the NHPA]. In addition, this document makes reference to The Secretary of the Interior’s Standards and Guidelines for Archeology and Historic Preservation. These guidelines
are available on the NPS website at http://www.nps.gov/history/local-law/arch_stnds_0.htm. The Secretary’s Standards are intended to provide broad national principles of archeological and historic preservation practices and methods, and the Guidelines provide broad national guidance on how to apply the Standards.

54 USC Section 302702 states that, “An Indian tribe may assume all or any part of the functions of a State Historic Preservation Officer...with respect to tribal land,...” provided that the Tribe:

1. Submits an official request from “...the Indian tribe’s chief governing authority...”
2. Designates, through appointment by the chief governing authority or by ordinance, “…a tribal preservation official to administer the tribal historic preservation program...”; and
3. Provides a plan that describes how the functions to be assumed will be carried out.

In reviewing a proposal from a Tribe, the National Park Service (NPS), acting on behalf of the Secretary of the Interior, must determine from the materials submitted by the Tribe whether that Tribe’s proposed preservation program is sufficient. NPS designed the application’s three major components to assist the Tribe in providing NPS the materials and information necessary to support that determination.

1. Submitting a Request from the Tribe’s Chief Governing Authority

The Tribe’s official request to assume historic preservation functions on tribal lands must be a written resolution adopted by and signed on behalf of the Tribe’s chief governing authority. The resolution must clearly indicate the governing authority’s intent to assume THPO functions pursuant to 54 USC 302701 et seq. [commonly known as Section 101(d) of the NHPA]. Please include the tribal resolution as Item 1 of the proposal.

2. Designating a Tribal Historic Preservation Officer

If the resolution included above as Item 1 also designates by name an individual as Tribal Historic Preservation Officer (THPO) to administer this program, no further information is necessary. If the resolution does not designate the THPO, the Tribe must include as Item 2 separate documentation of the designation of a THPO. That designation may be by tribal resolution, or it may be by tribal ordinance. Where the tribal ordinance specifies that a certain position, such as the Cultural Resources Department Manager, within the tribal government shall serve as THPO, the Tribe should include both a copy of the ordinance and the name of the individual currently holding the designated position. In case the Tribe wishes to delay the permanent appointment of a THPO until after the proposal has been approved by NPS, the Tribe must designate an Acting THPO to serve as the point of contact for the program until the permanent appointment is made. The selection criteria for a THPO are completely at the discretion of the tribal governing authority. The Tribe may establish whatever qualifications for the position that best suit the Tribe’s needs.

3. Preparing a Program Plan

The Program Plan includes two components; i.e., “Program Administration” and “THPO Functions”. The Program Administration component contains five separate elements and the THPO Functions component has three.
A. Program Administration

i. A description, including total acreage, of the tribal lands in accordance with Title 54 [the NHPA] definition cited in the introduction section of this document.

ii. A description of the staffing and/or consulting arrangements that have been made or will be made to provide the THPO with access to individuals who meet the Secretary of the Interior’s historic preservation professional qualifications standards.

iii. A description of how the tribe has established or will establish an advisory review board to provide advice to the THPO.

iv. Descriptions of how the Tribe will provide for appropriate participation in its program by the Tribe’s traditional cultural authorities, by representatives of other Tribes whose traditional lands are now within the Tribe’s jurisdiction, and by the interested public.

v. An acknowledgment that any non-tribal property owners within tribal lands may request the participation of the SHPO in addition to the THPO in decisions made pursuant to Title 54 [the NHPA] that affect that property.

B. THPO Functions

1. a.) A list of the THPO functions that the Tribe proposes to assume, and

   b.) A list of the THPO functions, if any, to remain the responsibility of the State.

2. A description of how the Tribe will carry out each of the functions that it is proposing to assume.

3. A description of the Tribe’s current historic preservation program or activities as they relate to the THPO functions that the Tribe proposes to assume.

Detailed instructions for each of these elements of the Program Plan follow.

3.A.i. Provide a Description of Tribal Lands, including total acreage, in accordance with the Title 54 [NHPA] Definition.

The description of tribal lands provides a clear understanding of the area of jurisdiction for which the Tribe is assuming historic preservation responsibilities from the State. The NPS currently (as of 2016) uses tribal lands acreage, whether it is a reservation and/or trust lands, as a factor in determining the amount of THPO grant funding available to each Tribe for program support. The Tribe’s fee title and individual allotted lands outside the reservation are not tribal lands for this program. They should not be included in the total acreage of tribal lands.

In addition to a descriptive historical narrative, include the following information:

a) the total acreage of lands within the exterior boundaries of the Tribe’s reservation regardless of the ownership status (tribal, private, State, or Federal).
   If there are lands held in trust for the benefit of the Tribe outside the boundaries of the reservation, or if the Tribe does not have a reservation but does have land held in trust by the Secretary for the benefit of the Tribe than please also include:
   b) the total acreage of those lands and a map or maps of those lands.
   c) a copy of Bureau of Indian Affairs documentation that provides NPS with information supporting the tribal lands claimed in a) and b) above.
3.A.ii. How Will the Tribe Include Individuals Who Meet the Secretary of the Interior’s Historic Preservation Professional Qualifications Standards in its Program?

While the Tribe can determine for itself the necessary qualifications for the Tribal Historic Preservation Officer, that individual must have access to individuals who meet the Secretary of the Interior’s Historic Preservation Professional Qualifications Standards (hereafter “Professional Standards”), (see Appendix C). The function of these individuals is to advise the THPO as necessary on activities and questions pertaining to the existence of, significance of, and possible impacts upon historic, cultural, and archeological resources.

Current regulations (encoded at 36 CFR 61.4) require SHPOs to have on staff an archeologist, architectural historian, and a historian who meet the Professional Standards (see the attached standards for these three professions). This requirement is modified for tribal programs in recognition that workloads, program emphasis and available funding may make such full-time staffing unnecessary. NPS expects THPOs as appropriate to get access to expertise in other historic preservation-related disciplines. The Tribe may arrange for access to individuals in these disciplines on whatever basis best suits the Tribe’s workload and resources. For example, the Tribe may wish to have a full-time or part-time archeologist on staff, while arranging to consult with an architectural historian or historian on a case by case basis as the need arises.

Based on the functions that the Tribe seeks to assume and/or on the nature of resources on its land, the Tribe may also propose that access to some of these disciplines is not necessary. Regardless of a perceived lack of need based upon past and current circumstances for certain professionals, the program plan must include access to qualified preservation professionals when specific expertise related to a property under consideration is needed.

Please include as Item 3.A.ii., a description of the arrangements the Tribe has made or is making in its program to include individuals who meet the Secretary of the Interior’s Professional Standards.

3.A.iii. How Does the Tribe Provide for an Advisory Review Board in Its Program?

An advisory review board (the board) performs a specific review function in the National Register nomination process. It also provides advice to the THPO on the direction and priorities of the THPO program.

Regulations for States require that a majority of the members of the State review board be individuals who meet the Professional Standards. Similar to the amended staffing requirements above, this requirement is modified for Tribes. While the Tribe’s review board membership does not need to meet the Professional Standards the review board must consist of individuals knowledgeable and interested in historic preservation and/or tribal culture, so that the board can offer meaningful advice to the THPO. When the board is formally reviewing a National Register nomination, the THPO must ensure that the board has the benefit of advice from an individual who meets the Professional Standards in the profession(s) appropriate to the resource under consideration.
How the advisory review board is established and appointed is at the discretion of the Tribe. The THPO may establish and appoint the board, unless the Tribe’s chief governing authority provides for some other method.

Please include as Item 3.A.iii. a discussion of the advisory review board that includes a description of how it is appointed, a demonstration that its members are knowledgeable and interested in the THPO program, and an assurance that it will have access to appropriately qualified individuals when it reviews any National Register nominations.

3.A.iv. HOW WILL THE TRIBE PROVIDE FOR THE APPROPRIATE PARTICIPATION OF TRIBAL CULTURAL AUTHORITIES, REPRESENTATIVES OF OTHER INTERESTED TRIBES, AND THE INTERESTED PUBLIC IN THE PROGRAM?

The Tribe is the best judge of the appropriate participation of tribal cultural authorities in the THPO program. Whether through representation on the advisory review board, through participation at the staff level, or through some other arrangement that reflects the Tribe’s needs, the plan must describe how the THPO program will have the benefit of advice from the Tribe’s cultural authorities.

Within the tribal lands for which the Tribe proposes to assume historic preservation duties, these duties may include some traditional lands of one or more other Tribes. The Tribe’s THPO program must provide for participation by representatives of these other Tribes in a way that ensures that the THPO is aware of and considers their concerns for properties that are significant to them. The plan must include an affirmation that the THPO will provide notice to other Tribes that may have an interest in an undertaking on reservation lands before a decision pursuant to this program is made that may affect that property.

Appropriate participation in the THPO program by the interested public means that, at a minimum of at least once a year, the THPO solicits and considers comments from the interested public on the goals, priorities, and activities of the THPO program. Whether the THPO fulfills this requirement by soliciting written comments, by holding a public meeting, or by some other means is at the discretion of the THPO. The THPO should use the tribal government’s usual and accepted methods for notifying the community of opportunities to comment on matters under consideration by the tribal government.

Please include as Item 3.A.iv., a description of how the program will “...provide for appropriate participation by (A) the Indian tribe’s traditional cultural authorities; (B) representatives of other Tribes...; and (C) the interested public.” [54 USC 302704, formerly §101(d)(4)(C)(ii) of the NHPA]. Please include in that description a list of other Indian tribes that may have traditional lands within the applicant Tribe’s present tribal boundaries.

3.A.v. AN ACKNOWLEDGEMENT THAT A NON-TRIBAL PROPERTY OWNER WITHIN THE TRIBAL LANDS MAY REQUEST THAT THE SHPO PARTICIPATE ALONG WITH THE THPO IN CARRYING OUT THESE FUNCTIONS WITH RESPECT TO THAT PROPERTY.

Title 54 of the United States Code specifies that the Tribe’s Program Plan must acknowledge that, “with respect to properties neither owned by a member of the Indian tribe nor held in trust by the Secretary for the benefit of the Indian tribe, at the request of the owner of the properties, that the State Historic Preservation Officer, in addition to the tribal preservation official, may exercise the
historic preservation responsibilities in accordance with subsections 302302 and 302303 of this title” [formerly section 101(d) (2) (D) (iii) of the NHPA].

Please include this acknowledgement as Item 3.A.v.

3.B.i. WHAT FUNCTIONS DOES THE TRIBE PROPOSE TO ASSUME?

Please refer to the list of THPO functions in Appendix A. NPS has taken them from Title 54 of the United States Code and customized them for Tribal use. The Tribe may simply copy the desired functions directly into the proposal. Additional explanatory notes for the functions are provided in Appendix B. When the NHPA was amended in 1992 to include Section 101 (d) (2), the THPO authorization language, the list of functions in Section 101 (b) (3) was not revised to include separate or additional language to fit tribal applications. The recodification of the NHPA in 2014 did not make these distinctions either. In addition, Title 54 provides that the Tribe may assume all or any part of the functions of the State Historic Preservation Officer in accordance with sections 302302 and 302303 of the title. Within limits, partial assumption may take the form of dividing the functions between the Tribe and the State, or it may take the form of sharing certain functions. For example, a Tribe may wish to assume a function as it pertains to certain resource types, but not to others. In any case, where a Tribe chooses partial assumption, the Tribe may choose later to assume some or all of the functions that originally remained with the SHPO.

Using the list in Appendix A, please include as Item 3.B.i.

a) the list of functions the Tribe proposes to assume, and
b) a list of the functions, if any, that will remain the responsibility of the SHPO.

3.B.ii. HOW WILL THE TRIBE CARRY OUT THE FUNCTIONS THAT IT PROPOSES TO ASSUME?

To demonstrate that the Tribe is capable of accepting THPO responsibilities, please provide a description of how the Tribe will carry out each of the THPO functions it proposes to assume. Some of these functions, such as educating the community or cooperating with other governments, can be carried out in various ways at the discretion of the Tribe. Other functions, such as the National Register nomination process or the Section 106 review process, are governed by detailed regulations. See the explanatory notes in Appendix B that accompany the list of THPO functions.

Please include, as Item 3.B.ii., brief descriptions of how the Tribe will carry out each of the functions that it proposes to assume. Where appropriate, be sure that the description demonstrates familiarity and consistency with the applicable regulation that governs that function. Also, where appropriate, be sure that the description explains how individuals that meet the Professional Standards will be involved in carrying out a given function.

3.B.iii. WHAT CURRENT TRIBAL HISTORIC PRESERVATION ACTIVITIES ARE RELATED TO THE FUNCTIONS THAT THE TRIBE PROPOSES TO ASSUME?

An important part of the Tribe’s demonstration that it is “capable of carrying out the functions” it proposes to assume is a description of the current activities that are related to those functions. The Tribe may already have a functioning historic preservation office that is carrying out activities similar to those that it proposes to assume in the national program. The Tribe may have established an office that carries out cultural resource compliance activities on contract from Federal agencies.
The Tribe may have participated in commenting on proposed Federal projects pursuant to Section 106 of the National Historic Preservation Act (now 54 USC 306018). The Tribe may also have completed one or more projects that identified, evaluated and/or protected historic, cultural, or archeological resources.

The Tribe may have adopted or may be considering a tribal ordinance that protects historic, cultural, and/or archeological resources. If the application cites a section of a tribal code containing an element of the program’s administrative component, then please append a copy of that section of the tribal code to the application. Documents such as tribal ordinances and preservation plans are not application requirements, and those that the Tribe submits are not subject to NPS approval. However, they may support the NPS’ determination that the Tribe is capable of performing the work.

Please include, as Item 3.B.iii., a narrative description of the Tribe’s activities that are related to the functions the Tribe proposes to assume. If the Tribe has prepared a tribal preservation ordinance, historic preservation plan, or other similar documents, the Tribe may enclose them as attachments to the narrative description.

IV. NATIONAL PARK SERVICE REVIEW OF THE TRIBE’S PROPOSAL

When the NPS receives the Tribe’s proposal, it will acknowledge receipt by email or letter and review the proposal for completeness and clarity within 45 calendar days of receipt. In the event that the NPS needs additional information to complete its files or review, it will notify the Tribe in writing and provide the opportunity for the Tribe to furnish that information. The NPS will also be available to answer questions the Tribe may have about the proposal or about the THPO program.

Once the proposal is complete, the NPS will carry out its statutory obligation to consult with the affected State Historic Preservation Officer(s), the Advisory Council on Historic Preservation, and any other Tribes whose traditional lands fall within the applicant Tribe’s current “tribal lands”. The NPS will meet that obligation by sending a copy of the Tribe’s proposal to each of these consulting parties and asking for their comments within calendar 30 days.

Following the 30-day comment period, NPS will make a decision on the Tribe’s proposal and notify the Tribe in writing within 30 days of the end of the consultation period. Having determined that the Tribe is capable of carrying out the functions, the NPS will send a proposed MOA between the Tribe and NPS that sets out the respective responsibilities. In the event that the NPS’ initial decision is not to approve the proposal, it will provide information on how the Tribe can reapply or appeal that decision.

V. DEADLINES

A proposal may be submitted at any time during the year. However, the final submission date to be eligible for a Historic Preservation Fund (HPF) grant for the next fiscal year is June 30 of the preceding fiscal year.
APPENDIX A

HISTORIC PRESERVATION OFFICER RESPONSIBILITIES
THAT MAY BE ASSUMED BY INDIAN TRIBES

54 USC 302702 (formerly Section 101(d) (2) of the National Historic Preservation Act) provides that "An Indian tribe may assume all or any part of the functions of a State Historic Preservation Officer. . . with respect to tribal land ... ". Those functions (customized for Tribes) are as follows:

It shall be the responsibility of the Tribal Historic Preservation Officer to –

(1) in cooperation with Federal and State agencies, local governments, and private organizations and individuals, direct and conduct a comprehensive survey of historic properties on tribal land and maintain inventories of such properties;

(2) identify and nominate eligible properties to the National Register and otherwise administer applications for listing historic properties on the National Register;

(3) prepare and implement a comprehensive Tribal historic preservation plan;

(4) administer the Tribal program of Federal assistance for historic preservation within tribal lands;

(5) advise and assist, as appropriate, Federal and State agencies and local governments in carrying out their historic preservation responsibilities;

(6) cooperate with the Secretary [of the Interior], the Advisory Council on Historic Preservation, other Federal and State agencies, local governments, and private organizations and individuals to ensure that historic properties are taken into consideration at all levels of planning and development;

(7) provide public information, education, and training; and technical assistance in historic preservation;

(8) cooperate with local governments in the development of local historic preservation programs and assist local governments in becoming certified pursuant to 54 USC Chapter 3025;

(9) consult with appropriate Federal agencies in accordance with this section on –
   (A) Federal undertakings that may affect historic property; and
   (B) the content and sufficiency of any plans developed to protect, manage, or reduce or mitigate harm to that property; and

(10) advise and assist in the evaluation of proposals for rehabilitation projects that may qualify for Federal assistance.
The following notes about functions listed in Appendix A may be helpful to the Tribe in preparing the Program Plan. They highlight the functions where terminology should specifically refer to the Tribe, and provide resource information to assist the Tribe in drafting its narrative descriptions. In order for the NPS to make the determination that the Tribe is fully capable of assuming certain responsibilities, the program plan needs to demonstrate a familiarity with and conform to the Secretary of the Interior’s Professional Standards. All applicants are encouraged to refer the NPS websites where information of how these responsibilities are carried out is available, and to use the Secretary of the Interior’s Standards and the appropriate Code of Federal Regulations (CFR) provisions in developing function descriptions. In its application, the Tribe should include a statement that it is only taking on the responsibilities that it explicitly mentions. Similarly, in the absence of explicit language to the contrary, NPS will assume that the Tribe wishes to take each mentioned responsibility in its entirety.

(1) in cooperation with Federal and State agencies, local governments, and private organizations and individuals, direct and conduct a comprehensive survey of historic properties on tribal land and maintain inventories of such properties;

Please consider that this function would apply to a survey on tribal land … rather than a Statewide survey.

(2) identify and nominate eligible properties to the National Register and otherwise administer applications for listing historic properties on the National Register

Assumption of this responsibility is separate and distinct from maintaining a tribal register of properties significant to the Tribe. For example, if a Tribe assumes the responsibility for nominating properties to the National Register of Historic Places, the Tribe must follow the National Register’s nomination procedures, and it must use the National Register’s evaluation criteria to assess the significance of the property being nominated. Those procedures and evaluation criteria are specified in regulations encoded at 36 CFR 60.4. If the Tribe is proposing to assume responsibility for the National Register nomination process, the Program Plan’s description of how the Tribe will carry out that function should demonstrate that the Tribe is familiar with the provisions of 36 CFR 60.4, and that the Tribe’s process will be consistent with its requirements.

If the Tribe proposes to establish and maintain its own tribal register – either instead of or in addition to nominating properties to the National Register – the Tribe may establish whatever procedures and evaluation criteria best meet the Tribe’s needs. If the Tribe chooses only to establish and maintain a tribal register, then the responsibility for nominating properties to the National Register will remain with the SHPO, and this responsibility should be listed with those that the Tribe is not assuming.

(3) prepare and implement a comprehensive historic preservation plan on tribal lands;

In similar fashion to function (1), this function should be read to apply to tribal lands rather than a Statewide plan. Information about how this work is done can be found at https://www.nps.gov/preservation-planning/stateplan-requirements.html. Additional published
information can be found in the National Register Bulletin # 24: Guidelines for local Surveys: A Basis for Preservation Planning available at: https://www.nps.gov/nr/publications/bulletins/nrb24/

(4) administer the Tribal program of Federal assistance for historic preservation within tribal lands;

The statutory reference to administering the “State program of federal assistance” is certainly confusing. While a Tribe is obviously not expected to administer the State’s program of federal assistance, the Tribe will have to administer the funds it receives for its own historic preservation program. Please simply strike “State” and insert “Tribal” and “tribal lands” in the two places where the term State occurs in the sentence. The Tribe must include this SHPO responsibility among those it chooses to assume, and provide a brief description of how the Tribe administers federal funds.

(8) cooperate with local governments in the development of local historic preservation programs and assist local governments in becoming certified pursuant to subsection (c);

The key to this function is the last phrase, “assist local governments in becoming certified”. Chapter 3025 of Title 54 provides for local governments (defined as general purpose political subdivisions of the State) with local historic preservation programs that meet guidelines developed by the State and approved by NPS to be certified to participate in the national program. That participation includes eligibility for funding: SHPOs are required to set aside a minimum of 10% of the funding they receive from NPS and to pass those funds on to certified local governments in their respective States. While a Tribe may certainly assume this function, it would be limited in scope to local governments (defined in the Act as general purpose political subdivisions of the State) that are physically within the Tribe’s reservation boundaries. Most Tribes have chosen NOT to assume this function. The following URL is the NPS web site where you can download more information: https://www.nps.gov/elg/.

(9) consult with appropriate Federal agencies in accordance with Title 54 on –
   (A) Federal undertakings that may affect historic property; and
   (B) the content and sufficiency of any plans developed to protect, manage, or to reduce or mitigate harm to that property

This function is generally referred to as the Section 106 review process. It is separate and distinct from any review function the Tribe may be carrying out pursuant to its own tribal authority. If the Tribe assumes the SHPO’s responsibility for commenting on the possible effects of proposed Federal undertakings, the Tribe must carry out that responsibility in accordance with the regulations (36 CFR 800) of the Advisory Council on Historic Preservation. The Tribe’s authority within that arena is set out in that regulation. The description in the Tribe’s Program Plan of how it will carry out this function must demonstrate that the Tribe is familiar with the provisions of 36 CFR 800, and that the Tribe will carry out the function in a manner that is consistent with that regulation. There are some closely linked elements within the historic preservation processes (such as survey and inventory of historic properties) that should be assumed as a whole rather than separately within the Tribe’s program. On the other hand, if the Tribe has adopted an ordinance requiring tribal approval and a permit for activities on tribal land that may affect historic or cultural resources, the terms of that ordinance are set out by the Tribe to meet its own needs. The two processes are separate and do not substitute for each other.
(10) advise and assist in the evaluation of proposals for rehabilitation projects that may qualify for Federal assistance.

Known informally as the “Tax Act program,” this function stems from a provision of Federal law that allows the owner of an income-producing building listed on the National Register to claim a Federal income tax credit for a portion of the expenses incurred to rehabilitate that building in accordance with the Secretary of the Interior’s Standards for Rehabilitation (online at https://www.nps.gov/tps/standards/rehabilitation.htm). If the Tribe assumes this SHPO function, it will be called upon to review architectural plans and specifications and to work with building owners to ensure that their projects are consistent with the Rehabilitation Standards. The Tribe will be responsible for making a recommendation to NPS as to whether the project meets the Rehabilitation Standards.

The regulations that guide the administration of this function are found at 36 CFR 67: Historic Preservation Certifications Under the Internal Revenue Code. If the Tribe chooses to assume this function, the description of how the Tribe will carry it out must show that the Tribe is familiar with the provisions of 36 CFR 67 and that the Tribe will carry out the function in a manner consistent with that regulation. The Tribe’s discussion in Item 3.A.ii. must describe the Tribe’s access to someone qualified to review plans and specifications for compliance with the Secretary of the Interior’s Standards for Rehabilitation. The following URL provides a link to the NPS Technical Preservation Services web site for more information https://www.nps.gov/tps/.
APPENDIX C

SECRETARY OF THE INTERIOR’S
HISTORIC PRESERVATION PROFESSIONAL QUALIFICATIONS STANDARDS
FOR ARCHEOLOGY, HISTORY, AND ARCHITECTURAL HISTORY

The following requirements are those used by the National Park Service, and have been previously published in the Code of Federal Regulations, 36 CFR Part 61, and are available online at https://www.nps.gov/history/local-law/arch_stnds_9.htm. The qualifications define minimum education and experience required to perform identification, evaluation, registration and treatment activities. In some cases, additional areas or levels of expertise may be needed, depending on the complexity of the task and the nature of the historic properties involved. In the following definitions, a year of full-time professional experience need not consist of a continuous year of full-time work but may be made up of discontinuous periods of full-time or part-time work adding up to the equivalent of a year of full-time experience.

ARCHEOLOGY

The minimum professional qualifications in archeology are a graduate degree in archeology, anthropology, or closely related field plus:

1. At least one year of full-time professional experience or equivalent specialized training in archeological research, administration, or management;
2. At least four months of supervised field and analytic experience in general North American archeology; and
3. Demonstrated ability to carry research to completion.

In addition to these minimum qualifications, a professional in prehistoric archeology shall have at least one year of full-time professional experience at a supervisory level in the study of archeological resources of the prehistoric period. A professional in historic archeology shall have at least one year of full-time experience at a supervisory level in the study of archeological resources of the historic period.

HISTORY

The minimum professional qualifications in history are a graduate degree in history or closely related field; or a bachelor’s degree in history or closely related field plus one of the following:

1. At least two years of full-time experience in research, writing, teaching, interpretation, or other demonstrable professional activity with an academic institution, historic organization or agency, museum, or other professional institution; or
2. Substantial contribution through research and publication to the body of scholarly knowledge in the field of history.

ARCHITECTURAL HISTORY

The minimum professional qualifications in architectural history are a graduate degree in architectural history, art history, historic preservation, or closely related field, with coursework in
American architectural history; or a bachelor’s degree in architectural history, art history, historic preservation, or closely related field plus one of the following:
1. At least two years of full-time experience in research, writing, or teaching in American architectural history or restoration architecture with an academic institution, historical organization or agency, museum, or other professional institution; or
2. Substantial contribution through research and publication to the body of scholarly knowledge in the field of American architectural history.