

## 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:

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#### 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.



## TRIBAL HISTORIC PRESERVATION OFFICER (THPO) PROGRAM

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### 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](mailto:thpo_program@nps.gov)

# NATIONAL PARK SERVICE TRIBAL HISTORIC PRESERVATION OFFICER APPLICATION INSTRUCTIONS

## 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](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.

## **APPENDIX B**

### **EXPLANATORY NOTES FOR SELECTED FUNCTIONS**

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 web sites 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/clg/>.

***(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](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.