

# *Preservation as Perpetuation:*

A Review of Federal Tribal Cultural  
Preservation Recommendations and  
Programs

## ABSTRACT

Title of Document:                   PRESERVATION AS PERPETUATION: A  
REVIEW OF FEDERAL TRIBAL CULTURAL  
PRESERVATION RECOMMENDATIONS  
AND PROGRAMS

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One of the goals of the modern Indian movement is the protection and perpetuation of tribal cultural practices, which includes the retention of tribal language, religion, oral histories, and the protection of sacred sites. Both the modern Indian movement and the preservation movement can trace similar paths in their rise in popularity, and their efforts to advance certain policy initiatives in the 20<sup>th</sup> century. These movements, however, have sometimes come into conflict with one another.

U.S. preservation policies and programs were initially strictly focused on the preservation of historic buildings, and using preservation to tell the American story. Recognition of sacred sites or tribal connections to the land, as well as telling the Native American point of view of western expansion was not a priority of federal efforts to preserve America's past. Throughout the 1970's and 1980's, tribes fought for greater recognition of the significance of traditional cultural properties and the repatriation of Indian human remains and sacred and funerary objects. In response, Congressional directed the

National Park Service (NPS) to report on funding needs related to sites of historical significance on Indian lands.

The NPS subsequently issued a report titled *Keepers of the Treasures: Protecting Historic Properties and Cultural Traditions on Indian Lands (Keepers of the Treasures)*.

The report concluded that tribes must have an opportunity to participate fully in the national historic preservation program, but on terms that respect their cultural values, traditions, and sovereignty. The report concluded with thirteen policy recommendations to Congress regarding ways in which the federal government could create, adapt, or change preservation programs to better suit the unique needs of Indian tribes.

*Keepers of the Treasures* was issued 21 years ago and raised many concerns about the effectiveness of federal preservation programs in relation to Indian tribes and cultural preservation. After two decades, many issues and questions raised in the report remain unresolved or unanswered. Through an evaluation of NPS preservation programs and the thirteen recommendations made in *Keepers of the Treasures*, this paper analyzes the efforts made by the federal government to adapt its preservation programs to assist Native American communities (American Indian tribes, Native Alaska Villages and Corporations, and Native Hawaiian Organizations) with cultural preservation projects. Additionally, this study attempts to document the ways in which preservation priorities of Native American communities have shifted over the last 21 years. The overall goal of this paper is to help the federal government improve its effectiveness in assisting tribes as they work to preserve not only significant sites, but also tribal language and culture.

PRESERVATION AS PERPETUATION: A REVIEW OF FEDERAL TRIBAL  
CULTURAL PRESERVATION RECOMMENDATIONS AND PROGRAMS

By

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Master Final Project submitted to the Faculty of the  
Historic Preservation Program of the  
School of Architecture, Planning, and Preservation,  
University of Maryland, College Park, in partial fulfillment  
of the requirements for the degree of  
Master of Historic  
Preservation  
2012

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## Acknowledgements

I would like to thank Professor Donald Linebaugh for his guidance and support throughout this project and during my time at the University of Maryland. I would also like to thank Professor Connie Ramirez, and Dr. Patricia Parker for their advice and guidance on this project. Without the hard work and dedication of my committee, this project would not have been possible.

Additionally, I would like to thank all of the staff at the National Park Service that helped me with this project, shared information, and agreed to be interviewed. In particular, I owe a great debt of gratitude to Deidre McCarthy, Emogene Bevitt, David Banks, James Bird, Paul Lusignan, Fred York, Bryan Mitchell, and Ronnie Emery for sharing their knowledge, expertise, and experience with me.

Last, but certainly not least, I would like to thank my family, friends and classmates for supporting me throughout this journey. Thank to my parents, Paul and Jane Brown, and to my fiancé, Brian Ahern, for listening, supporting, and encouraging me all along the way.

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## Chapter 1: Introduction

The United States has had a long and complex relationship with Native American tribes. From the mid-1800s through the 1950s, the United States government conducted a series of campaigns and programs aimed at assimilating Indian tribes into mainstream American society. These campaigns focused primarily on discouraging the use of tribes' traditional economy, language, social structure, law and religious beliefs. Indian people were that told they must completely acculturate in order to survive.<sup>1</sup> Years of work by the tribes slowly began to reverse the damage done to their native culture by these sorts of federal policies, and to educate federal officials about the unique character of Native American culture. Slowly, the federal government began to change its position and came to recognize and honor Native American tribes as sovereign nations. Since the 1950's, the federal government has passed a series of policy initiatives which offer greater protection for Native American cultural resources. Through these policy initiatives, the United States Congress (Congress) and federal agencies became more aware of the devastating effects that past federal programs have had on Native American culture and tribal traditions. Congress began to consider working with tribes to extend the protections offered broadly to historic resources to tribal resources as well.

In 1989, in an effort to strengthen federal relationships with Native Americans regarding cultural patrimony, Congress directed the National Park Service (NPS) to, “determine and report to the Committee [Committee on Appropriations] on the funding needs for the management, research, interpretation, protection, and

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<sup>1</sup> Darby C. Stapp and Michael S. Burney, *Tribal Cultural Resource Management The Full Circle to Stewardship* (New York, NY: AltaMira Press, 2002), 25.

development of sites of historical significance on Indian lands throughout the Nation.”<sup>2</sup> In response to this congressional mandate, NPS undertook an extensive review of the historic preservation needs and interests of Native American tribes. Representatives from sixty-three Native American tribes attended informational meetings with NPS staff, and many more tribes responded to written questionnaires sent out by the agency in an effort to accurately reflect the tribal perspective on preservation. Out of the listening sessions, meetings, and written responses from the tribes, NPS crafted a report, entitled *Keepers of the Treasures: Protecting Historic Properties on Indian Lands (Keepers of the Treasures)*, in 1990. It became clear to NPS staff that for historic preservation for Native American people is no less than the perpetuation of living cultural traditions, including beliefs, lifeways, languages, oral traditions, arts, crafts, and ceremonies, as well as the places and properties associated with them.<sup>3</sup> While federal preservation programs had typically focused on the physical built environment, NPS reported that Native American tribes were concerned about the preservation of the intangible, as well as the tangible, aspects of their cultural environment. Thus, it became clear that changes needed to be made to federal preservation programs to provide tribes with access to the preservation funding and technical support they needed to act on their concerns. *Keepers of the Treasures* concluded with thirteen recommendations, which NPS felt reflected the preservation needs and desires of Native American tribes and would move federal preservation programs toward a more productive relationship with the tribes.

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<sup>2</sup> United States Department of the Interior, National Park Service, Interagency Resources Division, *Keepers of the Treasures: Protecting Historic Properties and Cultural Traditions on Indian Lands* (Washington, DC: Government Printing Office, 1990), 1.

<sup>3</sup> *ibid*

Now that almost twenty-two years have passed since its publication, this paper seeks to examine and evaluate the recommendations in the *Keepers of the Treasures*. In addition, it explores two of the key grant programs that currently serve as the primary funding sources for federal preservation assistance to tribes. The evaluation of the report's recommendations examines whether *Keepers of the Treasures* has lived up to the hopes of its authors, and documents the extent to which their recommendations have been fulfilled. Additionally, this paper considers the potential for new policy recommendations that could further support cultural preservation. The evaluation of the recommendations is based on extensive research of NPS and congressional records as well as interviews with NPS staff familiar with tribal preservation programs. This report also includes a review of the Tribal Project Grant program and the Tribal Historic Preservation Office program; each is examined to determine the benefits, in terms of funding and technical support, to tribal preservation efforts. The review of the grant programs also contains a discussion of funding shortfalls as well as an analysis of the ability of tribes to access these programs. Specific projects discussed in this section, along with the financial data included in the review, were compiled from interviews with grant staff as well as from data compiled from annual grant reports. Through an analysis of the thirteen recommendations made in *Keepers of the Treasures* and an examination of the NPS preservation grant programs, this paper evaluates the progress that has been made by the federal government over the last two decades to adapt its preservation programs to assist Native American communities with cultural preservation projects.

It is important to consider the terminology that will be used throughout the following sections. As mentioned above, much of the effort has been anchored by

major pieces of federal legislation to implement policy changes and promote better agency/tribal relationships. However, significant confusion still remains at the federal level about their responsibility to and the status of native tribes. Part of this confusion stems from the legal definitions associated with the terms American Indians, Native Hawaiians, and Alaska Natives. Federal legislation specifies that each of these terms relate to specific and separate tribal entities, and the different definitions confer different rights and access to federal programs based on the legal status of each group. Adding to the confusion is the fact that the terms American Indian and Native American have, at times, been used interchangeably. Also, within native communities, there is no general consensus among the tribes as to a preference for the terms Native American and American Indian. Preference in terminology can be as varied as the tribes themselves. While some prefer Native Americans, others prefer American Indian, and still others prefer to be known by their traditional tribal name. For the purposes of this paper, and with all due respect, the term American Indian will be used to refer to tribes in the continental United States, and where appropriate the distinction will be made between Alaska Natives and Native Hawaiians. The term Native American will be used as an all-inclusive term when program or policies apply to American Indian tribes, Alaska Native Villages and Corporations, and Native Hawaiian Organizations.<sup>4</sup> Additionally, it should be noted that the term “Indian country” is used throughout sections of this paper, and is a legal definition describing areas where tribal sovereignty applies and state power is limited.<sup>5</sup>

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<sup>4</sup> A more detailed explanation of tribal definitions is included in the grant review section of this paper.

<sup>5</sup> United States Department of Agriculture, "Definition of Indian Country," January 12, 2012, [ftp://ftp-fc.sc.egov.usda.gov/MI/AI/AI\\_land\\_def.pdf](ftp://ftp-fc.sc.egov.usda.gov/MI/AI/AI_land_def.pdf).

Chapter 2 provides a brief overview of 20<sup>th</sup>-century policy initiatives relating to Natives Americans as well as general historic preservation initiatives. Chapter 3 presents a review of the *Keepers of the Treasures* recommendations, and considers new recommendations for how federal agencies can better respond to the cultural preservation needs of Native American tribes. Chapter 4 focuses on an analysis of the NPS Tribal Project Grants and the Tribal Historic Preservation Office grant program. The paper concludes (Chapter 5) with some additional considerations of NPS programmatic needs as well as some thoughts on future preservation research areas that may be of interest to Native American tribes. The goal of this paper is to evaluate the impact of federal preservations programs on Native American tribal cultural preservation efforts over the last twenty-two years, and determine how these programs can more effectively assist cultural preservation efforts as tribes work to preserve not only significant sites, but also traditional cultural lifeways.

## Chapter 2: An Overview of 20<sup>th</sup>-Century U.S. Policy Towards Native Americans and Historic Preservation

*We have left a trail of historical places across half of the United States. We don't have any way to go back and recognize those places and do anything about them.*<sup>6</sup>

—Mary Proctor, Cherokee Nation of Oklahoma

One of the primary goals of the modern Indian sovereignty movement was for Native peoples to regain some measure of control over their lives and their future.<sup>7</sup> Years of living under restrictive federal policies took a toll on tribal culture, and led tribes to fight for the protection and perpetuation of tribal cultural practices. Tribal efforts included the retention of tribal language, religion, oral histories, and the protection of sacred sites. Both the modern Indian sovereignty movement and the preservation movement can trace similar paths in their rise in popularity and their efforts to advance certain policy initiatives in the 20<sup>th</sup> century. These movements, however, have sometimes come into conflict with one another, threatening the government-to-government relationship that is required when one sovereign government interacts with another.

U.S. preservation policies and programs were initially focused, almost exclusively, on the preservation of historic buildings and using preservation to tell the story of American progress and exceptionalism. This early view of preservation created conflict with Indian tribes, who were seen as impediments to progress. Recognition of sacred sites or tribal connections to the land, as well as telling the

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<sup>6</sup> United States Department of the Interior, National Park Service, Interagency Resources Division, *Keepers of the Treasures: Protecting Historic Properties and Cultural Traditions on Indian Lands* (Washington, DC: Government Printing Office, 1990), 19.

<sup>7</sup> Stephen Cornell, *The Return of the Native: American Indian Political Resurgence* (Oxford: Oxford University Press, 1988), 6.

Native American point of view of western expansion was not a priority of federal efforts to preserve the American historical narrative. Additionally, federal policies from the mid-19<sup>th</sup> through mid-20<sup>th</sup> century actively worked to remove land from Native American ownership and contributed significantly to the loss of tribal cultural connections. Through the hard work of many dedicated Native American groups and individuals, the attitude of the federal government towards native cultures and preservation protections gradually began to shift. Starting in the mid-20<sup>th</sup> century and continuing on through the 1990s, the federal government passed several key pieces of legislation that not only acknowledged the unique rights of Native Americans, but also actively encouraged the protection of sacred sites and established programs that provided federal assistance for cultural preservation.

### **Early 20<sup>th</sup> Century (1900-1934)**

The early 20<sup>th</sup> century continued the legacy and ideology of the Native American affairs and historic preservation practices established in the late 19<sup>th</sup> century. The political sentiment towards Native Americans and historic preservation practices were at opposite ends of the spectrum. While issues relating to Native Americans and Native American culture were viewed as the sole purview and responsibility of the federal government, preservation activities were largely the responsibility of private organizations.

Native American tribal status was in serious jeopardy at the beginning of the 20<sup>th</sup> century. Since the Constitution gives Congress the power to regulate trade and make treaties with Native American tribes, the federal government took an active role in exercising its political authority over the tribes. By 1900 many tribes had experienced loss of land and the break up of their reservations caused by the

enactment of the Dawes Act, also known as the General Allotment Act of 1887. This act authorized the Bureau of Indian Affairs (BIA) to “allot” Indian reservations. The allotment process broke up the collective tribal ownership of reservations by transferring tribal lands to individual tribal members and then opening up all or a significant part of the remaining reservation land to acquisition by non-Indians.<sup>8</sup> The goal of the legislation was to turn Indians into farmers, “and, implicitly, to allow non-Indians to obtain tribal lands for agriculture, mining and logging.”<sup>9</sup> Allotment disadvantaged and dismantled many tribes, particularly those that were not traditional farming societies or whose tribe had been relocated to areas not suitable for farming. Additionally, the policy of allotment caused serious social and cultural disruption as the concept of group ownership and communal living was central to tribal ideologies and identity.<sup>10</sup> The breakup of reservations and the emphasis on individual ownership and lifestyle created disconnects between tribal members and their tribal culture. Allotment also removed all federal protection and treaty rights from allotted reservations. Thus, tribal lands became subject to taxes for the first time, and lands not allotted to tribal members were divided up into a patchwork pattern as non-Indian settlers moved in and purchased what were once reservation holdings.<sup>11</sup> Many tribes lost significant portions of their land to this type of settlement practice or to tax sales when tribal members could not make tax payments on their lands.<sup>12</sup> The loss of land

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<sup>8</sup> Charles Wilkinson, *Blood Struggle* (New York, NY: W.W. Norton and Company, 2005), 15.

<sup>9</sup> *ibid* 16

<sup>10</sup> Thomas Carter, Edward Chappell and Timothy McCleary, "In the Lodge of the Chickadee: Architecture and Cultural Resistance on the Crow Indian Reservation, 1884-1920," *Perspectives in Vernacular Architecture* 10 (2005): 100.

<sup>11</sup> Charles Wilkinson and Eric Biggs, "The Evolution of the Termination Policy," *American Indian Law Review* 5, no. 1 (1977): 142.

<sup>12</sup> *ibid*

and the associated loss of community were particularly devastating to tribes and called into question whether tribal culture and traditional lifeways could survive.

The government also pursued other policies during this time in an effort to assimilate Native Americans into mainstream western society. Among these was the creation of BIA boarding schools, and the outlawing of various dance and religious ceremonies on reservation lands. Many politicians advocated for education, “with history and traditions of the United States as its most essential ingredients,” as a vital component of the Americanization process.<sup>13</sup> The idea of education as a tool of assimilation led the BIA to create off-reservation boarding schools which removed Indian children from their homes, gave them Christian names, and forbade them from wearing traditional clothing and hairstyles and from speaking their native language.<sup>14</sup> As one Indian educator put it, the concept of the boarding schools was to “kill the Indian and save the man.”<sup>15</sup> By 1900, the BIA was running 25 off-reservation boarding schools around the country with 7,430 students.<sup>16</sup>

During this time, the BIA also took an active role in trying to eliminate traditional ceremonies by outlawing certain traditional dances. The Sioux Sun Dance ceremony was one of the traditions particularly targeted by the BIA. The ceremony was initially outlawed in 1881. In 1921, BIA Commissioner of Indian Affairs Charles H. Burke issued *Circular No. 1665: Indian Dancing*,<sup>17</sup> which recommended forbidding certain ceremonies and prohibited participation by dancers under fifty

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<sup>13</sup> Michael Kammen, *Mystic chords of memory: the transformation of tradition in American culture* (New York, NY: Knopf, 1991), 244.

<sup>14</sup> Charles Wilkinson, *Blood Struggle* (New York, NY: W.W. Norton and Company, 2005), 53.

<sup>15</sup> *ibid*

<sup>16</sup> *ibid*

<sup>17</sup> Supplemented two years later.

years old.<sup>18</sup> The BIA edicts did not completely destroy the Sun Dance and other traditional ceremonies as intended, but merely forced these types of ceremonies underground.

The Indian Reorganization Act (IRA) of 1934 put an end to many of the policies mentioned above, signaling the official end of Allotment and a recommitment by the government to honor treaty rights and the sovereign status of Indian tribes. At final count the Allotment policy had stripped nearly 90 million acres, an area the size of Washington and Idaho combined, from Indian control.<sup>19</sup> While the BIA boarding schools slowly closed their doors, the educational practices put in place through this system continued through the 1960s, leading to the loss of traditional language skills among some tribes and the complete extinction of some languages. Additionally, while IRA and other policies in the 1930s encouraged the return of traditional ceremonies and respect for tribal traditions, it would be the late 1960s before the Sun Dance ceremony was again held out in the open. By the mid-20<sup>th</sup> century, the compounding effects of Allotment, the BIA education system, and outlawing of traditional dances and ceremonies, led to a situation where many tribes were facing not only an economic crisis but a crisis of culture as well.

For as much as the federal government was involved in Native American affairs during the late 19<sup>th</sup> and early 20<sup>th</sup> century, it was equally detached from policy promoting historic preservation. By the turn of the century, most preservation efforts were lead by private individuals and concerned citizens groups, and were primarily focused on sites associated with the founding fathers. This type of private

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<sup>18</sup> Andrew Gulliford, "Tisa Wenger. We Have a Religion: The 1920s Pueblo Indian Dance Controversy and American Religious Freedom.," *The American Historical Review* (University of Chicago Press) 115, no. 2 (April 2010): 558.

<sup>19</sup> Charles Wilkinson, *Blood Struggle* (New York, NY: W.W. Norton and Company, 2005), 43.

involvement in preservation is best exemplified by the efforts of the Mount Vernon Ladies Association to preserve George Washington's home or the later efforts associated with the restoration of Monticello because of its association with Thomas Jefferson. It wasn't until 1906, with the passage of the Antiquities Act, that the federal government took a legislative interest in the preservation of historic sites. As the first federal effort to establish protections for historic sites, the act protected any historic or prehistoric ruin or monument, or any object of antiquity situated on land owned or controlled by the federal government, including Indian land.<sup>20</sup> The act also set up a permitting requirement for excavation on federal land, which was enforceable through criminal sanctions.<sup>21</sup> The Antiquities Act is seen as a reaction to a growing interest in the antiquities market by private collectors. The act was drafted and supported by wealthy Boston Brahmins who were fascinated by the southwest, and interested in protecting prehistoric sites from looting.<sup>22</sup> While the act attempted to stop looting on public lands, it only addressed artifacts left behind by native cultures and did not address the traditions of living Indians.<sup>23</sup> The legislation was enacted at a time when Indians were considered to be a vanishing race, whose last and best hope lay in assimilation. The act considered ancestral remains as resources to be studied by archeologists with permits, and did not recognize any association between modern Native American tribes and prehistoric sites, nor did the act recognize current tribes as having living cultures with rights to associated artifacts or burials. While the Act established historic preservation as a federal responsibility, it did little for the tribes

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<sup>20</sup> Lauryne Wright, "Cultural Resource Preservation Law: The Enhanced Focus on American Indians," *The Air Force Law Review* 54 AF (2004): 133.

<sup>21</sup> *ibid*

<sup>22</sup> Andrew Gulliford, *Sacred Objects and Sacred Places: Preserving Tribal Traditions* (Boulder, CO: University of Colorado Press, 2000), 100.

<sup>23</sup> *ibid*

by way of securing their cultural patrimony or sites of cultural significance. The Antiquities Act of 1906 was a step in the right direction, but lacked comprehensive protections. It would be another 60 years before Congress would consider legislation that would give federal agencies significant enforcement and permitting responsibilities for preservation.

### **Mid-20<sup>th</sup> Century (1935-1974)**

As mentioned above, the enactment of the IRA signaled the official end of allotment as a federal policy to forcefully dissolved Indian reservations. The IRA allowed federally recognized tribes to form tribal governments, encouraged tribal self-determination, and improved education and health services for Indian people. While the act was designed with little input from the tribes themselves and the Secretary of the Interior had to approve any tribal governments set up under the authority of IRA, the legislation was still seen as an improvement over previous federal policies. The IRA moved the federal government towards greater recognition of the sovereign status of Native American tribes. While the federal government was moving forward with more progressive policies and the implementation of the IRA, it also passed a relatively progressive bill relating to historic preservation. In 1935, Congress passed the Historic Sites Act, bringing many historic sites and parks under the authority of NPS, which was established as an agency in 1916. With the enactment of the Historic Sites Act, NPS became the primary preservation authority in the federal government. The language of the act specifically established it as “a national policy to preserve for public use historic sites, buildings, and objects of national significance.”<sup>24</sup> This is one of the first times that federal policy officially

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<sup>24</sup> Historic Sites Act of 1935, 49 Stat. 666; 16 U.S.C. 461-467.

stated that historic preservation was a government duty, as previous legislation had only authorized permitting and oversight of sites and monuments. The act paved the way for what would become monumental federal legislation for historic preservation in the mid-20<sup>th</sup> century.

While the IRA years were relatively good for the tribes and for tribal self-determination, life was still very hard on many reservations. Tribes were reeling from the effects of lost land and resources, and the standard of living on reservations was far below the national average.<sup>25</sup> Many reservations suffered from high unemployment rates, low annual incomes, and little or no access to health care, and high mortality rates. By the 1950s, many federal politicians saw the reservation system as impeding development, sapping the federal budget, and as a blight on the country.<sup>26</sup> Once again the federal government turned to policies that would extinguish federal treaty rights as a way to solve the “Indian problem.” In 1953, the U.S. Congress officially announced termination policy as the new directive for Indian tribes. The policy directed the federal government to eliminate federal reservations and remove federal services and protections from Indian tribes “as rapidly as possible.”<sup>27</sup> Congress directed the BIA to evaluate each tribe in order to determine which tribes could be terminated first. Initially, congressional hearings were held for each tribe scheduled for termination and tribal members were invited to attend and testify. However, many of these tribes were small and impoverished and could not afford to attend the hearings in Washington, and therefore they were not able to testify on a policy that would deeply affect them. By the end of the termination policy

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<sup>25</sup> Charles Wilkinson, *Blood Struggle* (New York, NY: W.W. Norton and Company, 2005), xii.

<sup>26</sup> *ibid* 56

<sup>27</sup> *ibid* 57

in the 1970s, “Congress had terminated more than a hundred tribes, including many small, and impoverished bands and Rancherias in California and Oregon.”<sup>28</sup> The termination affected at least 1.3 million acres and 11,000 people, diminished Indian trust land by 2.5 percent and cut off federal services for 3 percent of all federally recognized Indians.<sup>29</sup> Termination policy is now seen as one of the most culturally destructive policies towards Native Americans.

During the time that the termination policy was in force, the federal government also passed several acts that had extremely detrimental effects on the historic fabric of the Nation’s cities. The federal policies creating the national interstate highway system, coupled with the post World War II economic boom that encouraged suburban expansion, led to an abandonment and destruction of historic urban centers. City centers and downtowns came to be seen as havens for the poor and representative of undesirable and substandard living conditions. In response to the flight from the cities, and as part of progressive planning notions of improving living conditions for the poor, the federal government put in place policies that would become known as urban renewal. These policies resulted in the destruction of vast areas of historic fabric in order to make way for highways and housing projects. In many cases, the housing and highway projects were never built, resulting in blocks of surface parking lots and large vacant tracts. While urban renewal programs had many supporters, the effects and destruction caused by these programs became visible and fostered a movement that rejected urban renewal in favor of preservation of historic fabric. In 1961, Jane Jacobs published the *Death and Life of Great American Cities*, a powerful critique of urban renewal policies, and is credited with influencing policies

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<sup>28</sup> ibid 81

<sup>29</sup> ibid

that ultimately put an end to urban renewal. By the late 1960s, the political tide had turned against urban renewal and the federal government began to reevaluate its position on historic fabric and historic preservation.

In 1966, Congress passed the landmark National Historic Preservation Act (NHPA). This was the strongest statement to date by the federal government in support of historic preservation, and still serves as the foundation of federal historic preservation programs. The act created the National Register of Historic Places, required federal agencies to evaluate the effects of their actions on historic sites (the Section 106 process), and set up the Historic Preservation Fund, which provides federal funding and grants for preservation projects. This was the first time that the federal government had set up an annually-funded account specifically dedicated to historic preservation. While this was a major positive step for preservation efforts, the bill was primarily focused on the preservation of the built environment that was 50 years old or older, and significant in terms of historical events, important people, styles of architecture, or archaeological sites. The concept of cultural preservation was not present in the 1966 act, and Native Americans were not included as a group that could access the federal grants made available through the Historic Preservation Fund.

Additional protections for historic and archeological sites were included in the National Environmental Policy Act of 1969 (NEPA). NEPA created a system for evaluating the impact of major federal projects on both the natural and cultural environment. Additionally, NEPA introduced the concept of comment by interested parties. This concept later became an important part of tribal involvement in preservation and environmental protections as an element in government-to-

government consultation with tribes, now the stated federal protocol for interactions between Native American tribes and federal agencies.

While the 1960s brought significant changes to historic preservation policy, disadvantaged minority groups began to push for social justice and social change, for example, giving rise of the Civil Rights and modern Indian movements. Organizations, such as the American Indian Movement, which were dedicated to the full recognition of Indian sovereignty and the restoration of treaty rights, were established about this time. Additionally, the fact that Native American policy has always been federalized spurred on the modern Indian movement's efforts to attract congressional interest in specific Indian affairs issues. In particular, because of the system of treaty rights and the sovereign nature of Native American nations, the destinies of Native American tribes, unlike any other group in the United States, has been so tied to federal policy and so influenced by federal actions, it therefore became extremely important for the tribes to organize in order to influence congressional actions.<sup>30</sup>

The modern Indian movement received a much needed leadership boost from Indian veterans returning from World War II. "Twenty-five thousand young Indians, fully one-third of the eligible Indian population, three times the rate of the general public, had served."<sup>31</sup> Their service filled tribes with pride, and helped to pave the way for progress within Indian country. The main goals of the Indian movement were seen as the protection of their sovereignty and landbase, and the reversal of forced assimilation policies. Later litigation efforts focused on the recognition of treaty rights for hunting and fishing, but these efforts too had strong ties to land protections

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<sup>30</sup> *ibid* 102

<sup>31</sup> *ibid* 103

and the preservation of culture. Beginning in 1969, a series of high-profile national protests and occupations, organized by the American Indian Movement (AIM) and other Native American activist groups, brought national attention to the issues surrounding Native American treaty rights and the treatment of the tribes at the hands of the federal government.

The first major event was the occupation of Alcatraz in 1969, when a group of Native Americans claimed the island under the authority of the 1868 treaty of Fort Laramie with the Sioux and other tribes.<sup>32</sup> The occupation lasted nineteen months and drew national attention to the issue of honoring Native American treaties. Then, in 1972, building on the issues raised during the occupation of Alcatraz, AIM organized the Trail of Broken Treaties. This was a caravan across the country culminating in a protest at the BIA headquarters in Washington, D.C., but the protest escalated into a seven-day 400-person occupation of the BIA building. During the occupation, many of the protestors tore the building apart and destroyed furniture, files, artwork, graffitied walls, and smashed classic Indian pottery.<sup>33</sup> While the occupation brought extensive news coverage, it did little to further the Native American cause.

The incidents surrounding the takeover of the Wounded Knee historic site, however, would be a different story. In 1970, the bestseller *Bury My Heart at Wounded Knee* raised awareness about the forced relocation of Indian tribes and the years of repressive policies carried out by the federal government. Over the next few years, tensions mounted in Indian country over treaty rights, sovereign recognition, and the treatment of tribes at the hands of federal officials. These issues came to a head in 1973, with the standoff at Wounded Knee. Members of the Sioux Nation took

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<sup>32</sup> *ibid* 133

<sup>33</sup> *ibid* 142

over the Wounded Knee historical site, which led to a seventy-one day standoff with federal law enforcement. The occupiers issued statements calling for Congressional hearings on treaty rights. The standoff led to international media attention for the Native American cause, and by the end of the incident, “93 percent of Americans had heard of the takeover and 51 percent sympathized with the Indians.”<sup>34</sup> The activism of the 1960s and early 1970s helped to bring much needed awareness to the Native American cause. This activism combined with the legal and political efforts of the later 1970s helped promote the issues of treaty recognition and tribal preservation. As will be seen below, the 1970s through 1990s brought significant policy initiatives that helped to create greater protections for tribal preservation and helped to ensure greater access to federal preservation programs.

### **Late 20<sup>th</sup> Century (1975-1990)**

As discussed in the previous section, the early 1970s was a formative time for both the modern Indian movement and historic preservation. From 1975 to 1980 Congress churned out, in quick succession, several beneficial acts for Native Americans. There were many different elements that came together in order to create a positive legislative momentum. Most importantly, during this time we see a confluence of critical personalities in Washington. Native American tribes had been working for years to educate lawmakers about the unique and special relationship that existed between the tribes and the United States. In the late 1960s and 1970s, the political leadership began to support Native American rights. First and foremost, the administrations of Johnson, Nixon and Carter had generally positive predispositions

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<sup>34</sup> *ibid* 147

towards Indian affairs.<sup>35</sup> In fact, key staff within the Nixon White House pushed for many of the acts that restored federal recognition to terminated tribes. During this time Congressional leadership began to shift in their view of Indian affairs as well. Chairmanship of both the House and Senate Committees on Indian Affairs were given over to champions of Native American rights. Lastly, in the early 1970s, Forrest Gerard and Frank Ducheneaux became the first Native American staffers to hold key positions on the House and Senate Interior Committees, respectively. Many in the Native American community could see that this confluence of political support had the potential to bring about great changes in Indian country. The key was to strike while they had the political momentum.

The legislation to emerge out of this perfect storm was the Indian Self-Determination and Educational Assistance Act of 1975. The act signaled the official end of termination as a federal policy, and allowed for greater self-determination by the tribes. The act gave the Secretaries of the Interior, Health, and Education the authority to contract and make grants directly to federally recognized Indian tribes. This meant that for the first time tribes could receive direct grant funding from the federal government and determine how best to spend the money in support of tribal functions. For example, in the past, all funding for tribal schools had gone through the BIA and the BIA decided how the money should be spent. Under the new law, tribes could now determine how tribal schools should be set up. This legislation also paved the way for other agencies to create direct grant and funding programs for tribes.

Building on the political momentum started by the Self-Determination Act, Congress began drafting the American Indian Religious Freedom Act (AIRFA). The

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<sup>35</sup> *ibid* 194

bill, passed in 1975, was enacted to protect the traditional religious rights and cultural practices of Native Americans. While the act directs federal agencies to assure Indians access to and privacy for ceremonies at sacred sites on public lands, in actuality it is seen as mostly a toothless congressional resolution.<sup>36</sup> Federal agencies are admonished to reform the way in which they interact with Native American spiritual practitioners, but AIRFA puts no system in place to regulate or enforce the act.<sup>37</sup> Yet, the significance of AIRFA should not be underestimated. The act represents the federal recognition of Native American religions and the cultural connection to the land required to carry out these practices. The act can also be seen as moving the federal government towards a better understanding of Native American culture and belief systems. While it provides little in terms of enforcement, AIRFA sets the stage for later legislation that provides greater protection for the Native American community.

The 1970s was also a period of transformation within the preservation and archeological communities. With the new regulatory environment created by NHPA and NEPA, and a growing interest in Native American culture, a political push was begun to provide greater protections for archeological resources. The archeological community had relied on the protections put in place by the Antiquities Act, but several landmark court cases struck down the protective sections of the Antiquities Act as vague and unclear. In response to the court decisions, Congress drafted the Archeological Resources Protections Act (ARPA). The legislation, passed in 1979, strengthened the federal permitting process as well as federal control over

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<sup>36</sup> *ibid* 263

<sup>37</sup> Robert Michaelsen, "The Significance of the American Indian Religious Freedom Act of 1978," *Journal of American Academy of Religion* 52, no. 1 (March 1984): 98.

archeological resources. The act also included a provision requiring 30-day notification to Indian tribes when archeological excavation could harm tribal, cultural, or religious sites.<sup>38</sup> ARPA increased protections for Native American archeological resources and created greater penalties for the illegal trafficking of artifacts. The act takes the position that Native American artifacts are archeological resources, but the Native American community objects to this interpretation. The act, they note, was created with little input from the tribes, and does not treat Native Americans as having living cultures but rather as resources for study. Tribes take particular issue with the fact that ARPA defines burials as archeological resources, a definition they feel disrespects the sacred and sensitive nature of burial sites.<sup>39</sup> While ARPA helps to prevent the trafficking of Native American artifacts, it also has deficiencies which have surfaced in the political realm. Many of these issues were addressed in later revisions of the act and through other legislative vehicles.

Throughout the 1980s, legislative initiatives were put forward to bring greater protection to Native American burials and funerary objects, and to return objects of cultural patrimony held in museums to the tribes. The United States received some pressure from the international community with the passage of UNESCO's Convention of the Means of Prohibiting and Preventing the Illicit Export and Transfer of Ownership of Cultural Property, and throughout the 1980s there was steady push back from the tribes on the issue of museum ownership of burials and grave goods. The outcry from Indian country became more fervent when it was revealed that, "by the late 1980s it was estimated that museums, federal agencies, educational

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<sup>38</sup> Lauryne Wright, "Cultural Resource Preservation Law: The Enhanced Focus on American Indians," *The Air Force Law Review* 54 AF (2004): 133.

<sup>39</sup> Darby C. Stapp and Michael S. Burney, *Tribal Cultural Resource Management. The Full Circle to Stewardship* (New York, NY: AltaMira Press, 2002), 61.

institutions, and private collectors held between three hundred thousand and 2.5 million dead Native American bodies in addition to millions of funerary ceremonial and cultural objects.”<sup>40</sup> Legislators began to draft bills in response to these findings, and by 1989 the legislation for the National Museum of the American Indian was passed and included provisions for the dispensation of Native American skeletons held by the Smithsonian. Additionally, congressional staffs were in the process of working with the tribes to hammer out what would become the Native American Graves Protection and Repatriation Act (NAGPRA), which is discussed in later sections of this paper.

ARPA along with the NHPA amendments of 1980, set the stage for a decade long push for legislative reforms that would bring together elements of Indian affairs issues and historic preservation. In the 1980 amendments to the NHPA; Congress directed the Secretary of the Interior to study and recommend ways to “ preserve, conserve, and encourage the continuation of the diverse traditional prehistoric, historic, ethnic, and folk cultural traditions that underlie and are living expressions of our American heritage.”<sup>41</sup> In response to this directive, the Secretary of the Interior delivered a report to Congress, which recommended that traditional cultural resources be specifically addressed in the NHPA. This report, combined with the congressional interest in increased protection for cultural practices and traditions, and the findings and recommendations made in the *Keepers of the Treasures*, led to the 1990s being a watershed moment for cultural preservation.

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<sup>40</sup> D.S. Pensley, "The Native American Graves Protection and Repatriation Act (1990): Where the Native Voice is Missing," *Wicazo Review* 20, no. 2 (2005): 43.

<sup>41</sup> Patricia Parker and Tom King, "Guidelines for Evaluating and Documenting Traditional Cultural Properties," *National Register Bulletin* (U.S. Department of the Interior, National Park Service,, 1990), 2.

The federal policies described throughout this chapter highlight the convergence of the modern Indian movement and the historic preservation movement. The coming together of these policy areas helped to create the concept of cultural preservation, which will be explored throughout this paper. The policy milestones detailed in this chapter combined with the tireless work of Native American and preservation advocates helped to create the political environment in which the *Keepers of the Treasures* recommendations would be heard in Congress with the appropriate urgency and enacted accordingly. What follows is a review of those recommendations and an analysis of the grant programs that were created to better serve the unique preservation needs of the Native American community.

**Table 1: Federal Native American Indian and Preservation Policy**

Date	Title	Purpose
1887	General Allotment Act	Authorized the Bureau of Indian Affairs (BIA) to “allot” Indian reservations. The allotment process broke up the collective tribal ownership of reservations by transferring tribal lands to individual tribal members and then opening up all or a significant part of the remaining reservation land to acquisition by non-Indians. <sup>42</sup>
1906	Antiquities Act	The first federal effort to put in place protections for historic sites, the act protected any historic or prehistoric ruin or monument, or any object of antiquity situated on land owned or controlled by the federal government, including Indian land. <sup>43</sup> The act set up a permitting requirement for excavation on federal land. <sup>44</sup>

<sup>42</sup> Charles Wilkinson, *Blood Struggle* (New York, NY: W.W. Norton and Company, 2005), 15.

<sup>43</sup> Lauryne Wright, "Cultural Resource Preservation Law: The Enhanced Focus on American Indians," *The Air Force Law Review* 54 AF (2004): 133

<sup>44</sup> *ibid*

1934	Indian Reorganization Act	Authorizes the Secretary of the Interior to acquire and hold in trust land for federally recognized Indian Tribes, and allowed for tribal self-government. Signals the official end of federal allotment practices.
1935	Historic Sites Act	Brought several historic sites and parks under the authority of NPS and the Secretary of the Interior. The language of the act specifically states that, “it is a national policy to preserve for public use historic sites, buildings, and objects of national significance”
1950s-1960s	Urban Renewal Policy	Federal response to progressive planning movement and efforts to improve inner-city living conditions. Under the auspices of these programs, many cities experienced the destruction of historic fabric in order to build highways and housing projects.
1953-1975	Indian Termination Policy	A series of Congressional acts targeted at eliminating federal reservations by removing federal services and protective status from selected Indian lands.
1966	National Historic Preservation Act	The act created the National Register of Historic Places. Required federal agencies to evaluate the effects of their actions on historic sites (the 106 process). Sets up the Historic Preservation Fund, which provides federal funding and grants for preservation projects.
1969	National Environmental Protection Act	Creates a system for evaluating the impact of major federal projects on both the natural and cultural environment, and introduces the concept of comment by interested parties.
1975	Indian Self-Determination and Education Assistance Act.	Gave the Secretaries of the Interior, Health, and Education the authority to contract and make grants directly to federally recognized Indian tribes. The act signaled the official end of termination as a federal policy.
1975	American Indian Religious Freedom Act	Enacted to protect the traditional religious rights and cultural practices of Native Americans. The act directs

		federal agencies to assure Indians access to sacred sites, yet provides no mechanism for enforcement.
1979	Archeological Resources Protections Act	Strengthens both the federal permitting process as well as federal control over archeological resources. Includes a provision requiring 30-day notification to Indian tribes when archeological excavation could harm tribal, cultural, or religious sites. <sup>45</sup>
1989	National Museum of the American Indian Act	Established NMAI within the Smithsonian Institute. Included provisions for the dispensation of Native American skeletons held by the Smithsonian.

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<sup>45</sup> Lauryne Wright, "Cultural Resource Preservation Law: The Enhanced Focus on American Indians," *The Air Force Law Review* 54 AF (2004): 133.

### Chapter 3: *Keepers of the Treasures* Recommendations

*Nationally, as a group of people, we all seek preservation. I feel that if Congress could understand the impact and importance of cultural preservation, we as American Indians could close the circles that are not complete. ... Tribal preservation will be the key to enhance social development and growth for all Indian people. To know what you are, and where you came from, may determine where you are going.*  
<sup>46</sup> – Arly Yanah, Yavapai-Prescott

When *Keepers of the Treasures* was published in 1990, the authors presented thirteen recommendations to Congress regarding the development of comprehensive policies to provide stable financial and technical assistance to Native American tribes to support the retention, preservation, and enhancement of tribal cultural heritage. The recommendations were based on research by NPS staff, interviews with tribal representatives, and a comprehensive survey distributed to Native American tribes. The findings and subsequent recommendations discussed in *Keepers of the Treasures* corresponded with five issue areas identified by NPS staff: The Preservation and Retention of the American Indian Way of Life; Preserving American Indian Languages; Participation in the National Historic Preservation Program; Tribal Participation in the Preservation Disciplines; and Establishing and Developing Tribal Preservation Programs. Both the findings and recommendations were based on issues and concerns raised by the tribes, and much of the report relies on direct quotes from tribal members to convey the concerns, needs, and issues of importance in the Native American community. The report ultimately concluded that:

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<sup>46</sup> United States Department of the Interior, National Park Service, Interagency Resources Division, *Keepers of the Treasures: Protecting Historic Properties and Cultural Traditions on Indian Lands* (Washington, DC: Government Printing Office, 1990), 10.

...Indian cultures have experienced massive destruction, but the tide is changing. Indian tribes are using their limited resources to halt the loss of language, traditions, religion, objects, and sites. Halting the loss is not enough, however. Indian tribes are living cultures, fundamentally different in character from other components of American society, that can continue and be strengthened only through the perpetuation of their traditions.<sup>47</sup>

The thirteen recommendations were aimed at putting policies in place that would provide stable funding sources for the tribes and provide adequate technical assistance in a manner that respected and reinforced tribal values. Because of the unique sovereign status of Native American tribes it is important to understand that they differ from other groups in the United States in the way in which they interact with the federal government. Therefore, all programs relating to Native American tribes and their cultural preservation must be created at the federal level and any legislation that creates programs offering any type of funding or technical assistance to tribes must be carefully constructed. The recommendations were intended to guide Congress in its policy-making efforts, and ultimately create programs that would be beneficial to Native American communities while also respecting their status as sovereign nations. What follows is a review of the original thirteen recommendations made in *Keepers of the Treasures*. The review begins with an overview of the recommendations and the primary legislative or programmatic vehicles that were developed to fulfill the recommendations (Table 2). This is followed by a more in-depth analysis of how the recommendations have been fulfilled. This begins with a discussion of the two main pieces of legislation contributing to the fulfillment of the recommendations, and moves on to look at specific programs and policies that also

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<sup>47</sup> *ibid* 167

serve as contributing factors. This chapter also looks at recommendations that have not been fulfilled, and concludes with a consideration of policy recommendations that would be relevant to current federal preservation programs.

**Table 2: *Keepers of the Treasures* Recommendations and Resulting Actions**

<i>The Preservation and Retention of the American Indian Way of Life</i>	
<p>1.) The American people and their government should affirm as a national policy that the historic and cultural foundations of American Indian tribal cultures should be preserved and maintained as a vital part of our community life and development</p> <ul style="list-style-type: none"> <li>▪ <b>National Museum of the American Indian</b></li> <li>▪ <b>Executive Order 13007</b></li> </ul>	<p>4.) Federal policy should require Federal agencies, and State and local government, to ensure that Indian tribes are involved to the maximum extent feasible in decisions that affect their properties of cultural importance.</p> <ul style="list-style-type: none"> <li>▪ <b>Native American Grave Protection and Repatriation Act (NAGPRA)</b></li> <li>▪ <b>National Historic Preservation Act (NHPA) 1992 amendments</b></li> </ul>
<p>2.) The national American Indian cultural heritage policy should recognize that program to preserve the cultural heritage of Indian tribes differ in character from other American preservation programs.</p> <ul style="list-style-type: none"> <li>▪ <b>National Register Bulletin Guidelines for Evaluating and Documenting Traditional Cultural Properties</b></li> <li>▪ <b>1992 Amendments to the National Historic preservation Act and THPO Program</b></li> </ul>	<p>5.) Federal policy should encourage State and local governments to enact laws and ordinances providing for the identification and protection of properties of significance to Indian tribes in order to protect properties from the effects of land use and development and from looting and vandalism.</p> <ul style="list-style-type: none"> <li>▪ <b>Project Archaeology</b></li> </ul>
<p>3.) Federal policy should encourage agencies that provide grants for museum, historic preservation, arts, humanities, education, and research projects to give reasonable priority to proposals for projects carried out by or in cooperation with Indian tribes.</p> <ul style="list-style-type: none"> <li>▪ <b>National Park Service Tribal Project Grants</b></li> <li>▪ <b>Tribal Historic Preservation Officer Grant Program (THPO)</b></li> </ul>	<p>6.) Federal policy should encourage the accurate representation of the cultural values, languages, and histories of Indian tribes in the public schools and in other educational and interpretive programs.</p> <ul style="list-style-type: none"> <li>▪ <b>National Museum of the American Indian</b></li> <li>▪ <b>National Park Service Teaching with Historic</b></li> </ul>

	<b>Places (TWHP)</b>
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<i>Participation in the National Historic Preservation Program</i>	
8.) As part of developing a consistent American Indian cultural heritage policy, a national approach should be developed regarding the exhumation, retention, display, study, repatriation, and appropriate cultural treatment of human remains, funerary artifacts, and sacred artifacts. <ul style="list-style-type: none"> <li>▪ <b>Native American Graves Protection and Repatriation Act</b></li> <li>▪ <b>Federal Agency Repatriation</b></li> </ul>	9.) Tribal needs for confidentiality of certain kinds of information should be respected. <ul style="list-style-type: none"> <li>▪ <b>1992 amendments to the National Historic Preservation Act</b></li> <li>▪ <b>Tribal Historic Preservation Office Program</b></li> </ul>

<i>Tribal Participation in Preservation Disciplines</i>	
10.) Federal policy should provide for the appropriate involvement of Indian tribes in Federally-assisted preservation research on tribal lands and on ancestral lands off reservations. <ul style="list-style-type: none"> <li>▪ <b>National Park Service Tribal Project Grants</b></li> <li>▪ <b>Tribal Historic Preservation Offices Program</b></li> </ul>	12.) National programs for training of tribal members in preservation-related disciplines should be developed. <ul style="list-style-type: none"> <li>▪ <b>National Park Service Oral History Training</b></li> <li>▪ <b>National Center for Preservation Technology and Training (NCPTT)</b></li> </ul>
11.) Toward the achievement of tribal participation in preservation activities, it may be desirable to consider chartering the establishment of a national private organization to promote and assist in the preservation of the cultural heritage of Indian tribes. <ul style="list-style-type: none"> <li>▪ <b>Keepers of the Treasures</b></li> <li>▪ <b>National Association of Tribal Historic Preservation Officers (NATHPO)</b></li> </ul>	

<i>Establishing and Developing Tribal Preservation Programs</i>
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13.) The National Historic Preservation Act (16 U.S.C. 470) should be amended to establish a separate title authorizing programs, policies and procedures for tribal heritage preservation and for financial support as part of the annual appropriations process.

- **1992 Amendments to the National Historic Preservation Act**
- **Tribal Historic Preservation Officers Program**

### **Recommendations Fulfilled**

Since the publication of *Keepers of the Treasures*, some twenty-two years ago, all thirteen recommendations have been met in part or in full through different federal policy initiatives. In particular, there are several specific pieces of legislation that have contributed directly to the fulfillment of the recommendations or have authorized programs that meet certain aspects of the recommended policy.

One of the primary pieces of legislation that should be considered in the evaluation of the *Keepers of the Treasures* recommendations is the Native American Graves Protection and Repatriation Act (NAGPRA). While legislative efforts to pass NAGPRA began as early as the mid-1980s, the act was not signed into law until 1990, shortly after the publication of *Keepers of the Treasures*. While not directly responsible for the passage and enactment of NAGPRA, legislators, as well as the Secretary of the Interior and other high ranking executive branch officials, would have been aware of the report's recommendations. *Keepers of the Treasures* reinforced the importance and necessity of having a national policy for the repatriation of human remains and funerary and sacred objects. NAGPRA directly addresses *Keepers of the Treasures* recommendation #8, which states that “*As part of developing a consistent American Indian cultural heritage policy, a national approach should be developed regarding the exhumation, retention, display, study, repatriation, and appropriate cultural treatment of human remains, funerary*

*artifacts, and sacred artifacts.*"<sup>48</sup> NAGPRA sets up a process by which all federal agencies and museums that receive federal funds must inventory their collections for any human remains, burial artifacts, sacred objects, and objects of cultural patrimony associated with American Indian tribes, Alaska Native groups and Native Hawaiian organizations. If requested, these institutions must repatriate the remains and/or sacred objects to lineal descendants, Indian tribes, Alaska Native Villages and Corporations, and Native Hawaiian organizations. NAGPRA also authorizes the Secretary of the Interior to create a grant program, which would provide funding assistance to American Indian tribes, Native Hawaiian organizations, and Alaska Native Villages and Corporations, and museums to carry out documentation for the purposes of repatriation, to assist with travel expenses for consultation, and to assist with expenses associated with repatriation.

While NAGPRA fulfills recommendation #8, the consultation provisions outlined in the legislation also help to meet recommendation #4, which states that federal agencies should ensure that tribes are involved to the maximum extent feasible in the decisions that effect properties of cultural importance. NAGPRA requires consultation with potentially affected lineal descendants, American Indian tribes, Alaska Native groups, and Native Hawaiian organizations prior to intentional excavations and immediately following inadvertent discoveries of cultural items on federal or tribal lands.<sup>49</sup> A more complete discussion of consultation policy is included later in this chapter.

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<sup>48</sup> United States Department of the Interior, National Park Service, Interagency Resources Division, *Keepers of the Treasures: Protecting Historic Properties and Cultural Traditions on Indian Lands* (Washington, DC: Government Printing Office, 1990), v.

<sup>49</sup> Lauryne Wright, "Cultural Resource Preservation Law: The Enhanced Focus on American Indians," *The Air Force Law Review* 54 AF (2004): 135.

The second major piece of legislation related to the fulfillment of the recommendations is the 1992 amendments to the National Historic Preservation Act (the 1992 amendments). First and foremost, the amendments clarify that properties of religious and cultural importance to Indian tribes may be eligible for the National Register.<sup>50</sup> The 1992 Amendments also establish the tribal consultation requirement in the Section 106 process. Furthermore, the amendments authorize the creation of the Tribal Historic Preservation Office (THPO) program, which allows federally recognized tribes to take on one or more formal preservation responsibilities on tribal lands and authorizes funding to tribes that take on these responsibilities.<sup>51</sup> All of these aspects of the 1992 amendments work to directly meet recommendation #13, and contribute to recommendations #2, #4, and #9. Recommendation #13 states that, “*The National Historic Preservation Act, as amended, (16 U.S.C.470) should be amended to establish a separate title authorizing programs, policies and procedures for tribal heritage preservation and for financial support as part of the annual appropriations process.*”<sup>52</sup> Through the authorization and creation of the THPO program, the federal government worked through both legislative and programmatic means to specifically meet recommendation #13.

The THPO program, as created by the 1992 amendments, also helps to meet recommendation #2, which states that, “*The national American Indian cultural heritage policy should recognize that programs to preserve the cultural heritage of*

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<sup>50</sup> Advisory Council on Historic Preservation, *Consulting with Indian Tribes in the Section 106 Review Process*, January 19, 2012, <http://www.achp.gov/regs-tribes.html>.

<sup>51</sup> Advisory Council on Historic Preservation, *Tribal Historic Preservation Officers*, January 19, 2012, <http://www.achp.gov/thpo.html>.

<sup>52</sup> United States Department of the Interior, National Park Service, Interagency Resources Division, *Keepers of the Treasures: Protecting Historic Properties and Cultural Traditions on Indian Lands* (Washington, DC: Government Printing Office, 1990), v.

*Indian tribes differ in character from other American preservation programs.*<sup>53</sup> The THPO program is intended to be a similar, but not an exact replica, of the State Historic Preservation Officer (SHPO) program for states. The program allows tribes to take over selected federal preservation responsibilities. While States must accept all of the federal historic preservation responsibilities outlined in the NHPA, tribes may pick and choose which responsibilities they want to take on, allowing tribes to tailor the THPO program to their unique needs. The THPO program has worked to assist tribes with cultural preservation programs in a way that honors tribal sovereignty while still working within the federal preservation authority granted by Congress.

The 1992 amendments also direct agencies to ensure that Native American tribes were included in the Section 106 process. The inclusion of Native Americans as a party to be consulted during the evaluation of federally funded projects helps to fulfill recommendation #4. Recommendation #4 states that, “*Federal policy should require Federal agencies, and encourage State and local governments, to ensure that Indian tribes are involved to the maximum extent feasible in decisions that affect properties of cultural importance.*”<sup>54</sup> This specific recommendation encourages the development of a policy that requires the greater inclusion of tribes in the decision making process where cultural sites are concerned. While the 1992 amendments contribute to the fulfillment of this recommendation, the recommendation is also met through several other policies as well. Both NAGPRA and NEPA (discussed more completely in earlier sections) contain provisions that direct federal agencies to

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<sup>53</sup> United States Department of the Interior, National Park Service, Interagency Resources Division, *Keepers of the Treasures: Protecting Historic Properties and Cultural Traditions on Indian Lands* (Washington, DC: Government Printing Office, 1990). iv

<sup>54</sup> *ibid*

consult with Native American tribes regarding cultural resources. In line with the political sentiment expressed in these two landmark legislative vehicles, President Clinton signed Executive Order 13175 on Consultation (E.O. 13175) in 2000. E.O. 13175 mandates “early consultation” between federal agencies and tribes when agencies are developing or implementing proposed regulations with tribal implications. The E.O. directs federal agencies to provide the Office of Management and Budget with a “statement of the extent to which the concerns of tribal officials have been met.”<sup>55</sup> However, as of 2009, many agencies had failed to complete and/or finalize Department-wide consultation policies as required by the E.O.

Recognizing this lack of policy formalization, the President Obama signed a memorandum in November 2009, renewing the Government’s commitment to consultation and the government-to-government relationship with Indian tribes. The memo directed agencies to execute a consultation policy as outlined in Executive Order 13175. In response to this directive the Department of the Interior (DOI) undertook a policy initiative to create a formal consultation policy written with the input of Native American tribes. The Department held seven meetings with tribal representatives around the country, and out of these meetings came a series of recommendations that formed the formal DOI policy. Signed on December 1, 2011, the DOI Consultation policy outlines procedures for government-to-government consultation with Native American Tribes. The policy instructs all Bureaus within DOI to create and implement their own consultation policies based on the overarching DOI policy. While not directly impacting the current iteration of the DOI policy, *the Keepers of the Treasures* certainly influenced earlier legislative and policy efforts to

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<sup>55</sup> "Exec. Order No. 13175", § 3(a), 65 Fed Reg. 67249 (November 6, 2000).

formalize the government-to-government relationship that led to the Obama memo and the formal DOI policy being signed. It is clear through these various and diverse policy efforts that recommendation #4 has been met and there are now federal policies in place that encourage the involvement of Native American tribes to the maximum extent possible in the decision making process for properties of cultural importance.

There are also two programs that merit specific inclusion in the discussion of the fulfillment of the *Keepers of the Treasures* recommendations: the Tribal Project Grant program and the THPO program. The Tribal Project Grants program was created in 1990, and is funded through the Historic Preservation Fund. The grant is open to federally recognized tribes, Native Hawaiian Organizations, and Alaska Native groups. The program, currently, funds projects in the following categories: locating and identifying cultural resources, preserving a historic property listed on the National Register, preservation planning, oral history and documenting cultural traditions, and education and training projects in historic and cultural preservation. The THPO program was authorized in the 1992 NHPA amendments, and first funded in 1996; the grant provides federally recognized tribes, who have formally accepted one or more preservation responsibilities from the federal government, with funding for preservation activities on tribal lands. The THPO program is also funded through the Historic Preservation Fund and is a non-competitive grant.

These two programs help to fulfill recommendations #2, #3, and #10. Both programs serve as recognition that federal policy to preserve tribal cultural heritage differs from other preservation programs (recommendation #2). They are both federal grant programs to tribes, which responds to recommendation #3 (*Federal*

*policy should encourage agencies that provide grants for museums, historic preservation, arts, humanities, education, and research projects to give reasonable priority to proposals for projects carried out by or in cooperation with Indian tribes.*) They also respond directly to recommendation #10 (*Federal policy should provide for the appropriate involvement of Indian tribes in Federally-assisted preservation research on tribal lands and on ancestral lands off reservation.*). The Tribal Project Grant program, directly responding to this recommendation, includes in its grant guidance that tribes can apply for grants to fund projects that are focused on locating and identifying cultural resources, preserving a historic property listed on the National Register, and education and training projects in historic and cultural preservation. The grant program has also funded projects where the tribes are documenting specific resources. The THPO program responds to recommendation #10 by authorizing federal agencies to enter into agreements with THPO tribes to conduct cultural resource surveys on tribal lands and issue reports as part of the Section 106 process.

While the two grant programs work in conjunction to meet some of the recommendations, they can also be seen as separate programs that meet different recommendations on their own. When viewed as individual programs, it becomes clear that each contributes to the fulfillment of recommendations #6, #7, #9, #12, and #13. The Tribal Project grants help to meet recommendation #6 (*Federal policy should encourage the accurate representation of the cultural values, languages, and histories of Indian tribes in the public schools and in other educational and interpretive programs.*) by funding oral history and documenting cultural tradition projects. For example, a 2001 grant given to the University of Hawaii Center for

Hawaiian Studies funded a project that videotaped interviews with Hawaiian Kupuna (Elders) who are knowledgeable of the rich history of their place of birth or residence. The footage and transcripts from these 14 interviews served as a foundation for curriculum and course development for educational resource management programs that are planned at the Center for Hawaiian Studies.<sup>56</sup>

Similarly, the Tribal Project Grants help to meet recommendation #7 (*Federal policy should recognize the central importance of language in maintaining the integrity of Indian tribal traditions and the tribal sense of identity and well-being. National efforts to assist tribes to preserve and use their native languages and oral traditions should be established in conjunction with the amendment of the National Historic Preservation Act recommended below*) because the program has consistently funded projects that assist tribes with oral history projects, documenting cultural practices in native languages, and training for tribal members in documenting and recording native languages. An example of this type of work is a 1997 grant to the Mississippi Band of Choctaw Indians to conduct 100 interviews with tribal elders speaking their native language. Additionally, the Tribal Project Grant program can be seen as meeting recommendation #12 (*National programs for training of tribal members in preservation-related disciplines should be developed*) because one of the allowable funding activities under the program is for education and training projects in historic and cultural preservation. For instance, a 1997 Tribal Project Grant was awarded to the Poarch Band of Creek Indians for a comprehensive training program in preservation law and preservation techniques.

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<sup>56</sup> National Park Service, *Fiscal Year 2001 Historic Preservation Fund Grants to Indian Tribes and Alaska Natives and Native Hawaiian Organizations*, (Washington, DC: National Park Service Tribal Project Grant Program, 2001).

By the same token, the THPO program has contributed to the fulfillment of the recommendations as well. The THPO program contributes to recommendation #9 (*Tribal needs for confidentiality of certain kinds of information should be respected*) by authorizing the Secretary of the Interior to enter into agreements with tribes to assume responsibility for Section 106 review on tribal lands. As part of this responsibility, some tribes have chosen to develop their own tribal registers of historic and cultural resources, which allow them to maintain confidential records of culturally important sites, and only disclose certain information as needed during the Section 106 process. Unlike the National Register, tribal registers are not subject to Freedom of Information Act requests.<sup>57</sup> It is also important to note that the 1992 amendments contribute to recommendation #9 (*Tribal needs for confidentiality of certain kinds of information should be respected.*) by expanding the authority outlined in Section 304 of the National Historic Preservation Act (NHPA). Section 304 allows federal agencies to withhold information about the location, character, or ownership of a historic resource if it is determined that disclosure of the information may impede the use of a traditional religious site by practitioners.<sup>58</sup> Prior to the 1992 amendments agencies could withhold information if disclosure was determined to cause a significant invasion of privacy and/or risk harm to the historic resource. Section 304 also gives agencies authority to determine who may have access to withheld information.<sup>59</sup> Additionally, as mentioned above in the discussion on

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<sup>57</sup> *ibid*

<sup>58</sup> "Confidentiality of the Locations of Sensitive Historic Resources," *National Historic Preservation Act Section 304*, Vol. 16 U.S.C, 470w-3(a).

<sup>59</sup> Paul Lusignan, Historian/National Register Reviewer. interview by Rachel Brown, , (January 11, 2012).

recommendation #13, the 1992 amendments, and thus the THPO program, responds directly to the policy outlined in the recommendation as well.

It should also be noted that some of the recommendations are fulfilled by programs run through the Smithsonian Institution, specifically the National Museum of the American Indian (recommendation #1) and through other policies and programs run through the Department of Education and other federal agencies (recommendation #7), as well as non-profit organizations (recommendation #11). Additionally, independent government agencies, like the Institute for Museum and Library Services, the National Endowment for the Arts, Library of Congress, National Endowment for the Humanities, and the Smithsonian Institution, who receive direct funding from the Congress, have all offered and continue to offer grants to tribes for cultural preservation documentation projects. Many of these agencies and institutes also offer technical assistance in addition to funding assistance. While a complete review of each grant program is outside the scope of this report, it is appropriate to acknowledge these institutions and their programs as contributing to tribal cultural preservation as outlined in *Keepers of the Treasures*. Appendix A provides a full list and explanation of the recommendations paired with corresponding programs or policies.

### **Recommendations to be Fulfilled**

As evident from the discussion above, many, if not all, of the recommendations have been met in some form, yet this does not mean that the policy work is done. There are several policy issues that could still be executed in order to more completely address the needs and concerns laid out in *Keepers of the Treasures*.

It is clear that there is still work for the Executive branch agencies to do, for Congress to address, and for specific entities, like the National Park Service, to complete.

First and foremost, Federal departments, agencies, offices, and bureaus need to formalize and publish their consultation policies. While DOI has officially formalized their policy, it took over 22 years from publication of *Keepers of the Treasures* recommendations for the Department to set out any sort of official guidance on tribal consultation. It is true that many of the offices and bureaus within DOI have been operating for years under interim guidance on consultation. However, now that the Department has a formal policy in place each component agency within DOI (e.g. National Park Service, Bureau of Reclamation) will need to work with the tribes to develop agency specific policies that are in line with the overarching DOI policy. Each department within the federal government and their sub-agencies need to work to complete and publish their finalized consultation policy with Indian tribes. This will not only help to meet recommendation #4, but also help to strengthen and reaffirm the government-to-government relationship between the United States and sovereign tribes.

A second recommendation that can still be seen as outstanding is #5 (*Federal policy should encourage State and local governments to enact laws or ordinances providing for the identification and protection of properties of significance to Indian tribes in order to protect such properties from effects of land use and development and from looting and vandalism.*). While educational programs like Project Archaeology (see Appendix A) are being put in place through partnerships between federal agencies and state institutions of higher education, it is more difficult to point to specific legislation that addresses the recommendation that federal policy should

encourage states to enact laws to prevent looting. Because of the unique nature of the relationship between the federal government and state/local governments it becomes constitutionally difficult to pass legislation that encourages states to act in a certain way. While it is possible for the federal government to use its appropriations authority to withhold funding from states in order to encourage certain actions, this type of action does not seem necessary. According to *A Survey of State Statutes Protecting Archeological Resources*, put out by the National Trust for Historic Preservation in conjunction with NPS, all 50 States have enacted laws protecting archeological resources and requiring permitting for excavation purposes. Therefore while legislation or agency policy may not specifically encourage the enactment of these types of ordinances, it is clear that many States take legislative cues from the federal government, and were likely influenced by the passage of federal protections for archeological sites and the criminalization of looting. Additionally, tribes have increased their advocacy and outreach in an effort to influence state legislatures to pass laws that mimic the federal statutes. Short of tying federal funding specifically to archeological site identification and protection laws, the states have done a good job of enacting legislation that provides for the identification and properties of significance to Indian tribes without direct influence from the federal government.

A third recommendation that has not been fully addressed is recommendation #7 (*Federal policy should recognize the central importance of language in maintaining the integrity of Indian tribal traditions and the tribal sense of identity and well-being. National efforts to assist tribes to preserve and use their native languages and oral traditions should be established in conjunction with the amendment of the National Historic Preservation Act recommended below.*) While

there have been multiple legislative initiatives that address the importance of preserving language and funding language programs, primarily through the Department of Education (see Appendix A), the NHPA has not been amended to include authorized programs to assist tribes in preserving their native languages and oral traditions. Should future amendments be made to the NHPA, it would be beneficial to include legislative language recognizing the important role that native languages play in cultural preservation. The efforts of the federal government in the early 20<sup>th</sup> century to acculturate tribes into mainstream American culture, through boarding school programs and other practices, led many tribes to experience diminished capacity or even the complete loss of their native languages. Many tribes feel that the best ways to pass on their culture is through their own unique and distinctive languages and oral traditions. The federal government should make every effort to include provisions for language and oral tradition preservation and retention in future amendments to the NHPA.

Lastly, policy guidance documents could be completed by the National Park Service to assist in fulfilling recommendation #9. The 1992 amendments inserted language into Section 304 of NHPA to allow federal agencies to withhold information about the location, character, or ownership of a historic resource if it is determined that disclosure of the information may impede the use of a traditional religious site by practitioners.<sup>60</sup> Prior to the 1992 amendments, agencies could withhold information if disclosure was determined to cause a significant invasion of privacy and/or risk harm to the historic resource. The amendment to Section 304 now gives agencies authority

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<sup>60</sup> "Confidentiality of the Locations of Sensitive Historic Resources," National Historic Preservation Act Section 304, 16 U.S.C 470w-3(a).

to determine who may have access to withheld information.<sup>61</sup> NPS has a series of bulletins relating to the National Register of Historic Places, which offers guidance to staff working on National Register nominations, but the bulletin relating to the restriction of historic and prehistoric resource information was last revised in the late 1980s, thus not reflecting the changes added in the 1992 amendment.<sup>62</sup> While NPS operates informally under the guidance of Section 304 and restricts information about sites pertaining to traditional religious sites, it has yet to publish formal guidance regarding Section 304. In order to create one coherent and unified policy, it is important for NPS to finalize and publish new guidelines for restricting information about historic and prehistoric resources.

### **Future Recommendations**

In addition to completing the policy work relating to the outstanding *Keepers of the Treasures* recommendations, the federal government should address several additional areas of importance in the tribal cultural preservation policy arena. While the preceding discussion indicates that there are policies in place that address each of the recommendations, the work in these policy areas is not done. First, Federal policy-makers will always need to be vigilant and ensure that the relationship between the United States and tribes continues to maintain a high level of government-to-government interaction and that respect for the sovereign status of tribes is paramount in the federal agency operating procedure. Second, there will be a continuing need to fund programs that support cultural preservation. Third, the arena of cultural preservation and cultural resource policy is an evolving field, and it will be

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<sup>61</sup> Paul Lusignan, Historian/National Register Reviewer, interview by Rachel Brown, (January 11, 2012).

<sup>62</sup> Paul Lusignan, Historian/National Register Reviewer, interview by Rachel Brown, (January 11, 2012).

important for the federal government to be aware of these changes and provide the appropriate adaptation to its federal preservation programs and policies in order to keep pace with tribal preservation needs.

There are several specific areas relating to cultural preservation that could be addressed through federal policy and programs. The first is that national preservation policy should address tribal concerns about confidentiality. This is an issue of great concern for tribes, particularly when dealing with sensitive information relating to sacred sites. While Section 304 of the NHPA and provisions in ARPA allow for restricting information about traditional religious sites and archeological sites respectively, tribes remain concerned that any information collected about culturally significant sites could be subject to Freedom of Information Act (FOIA) requests. Under FOIA, the public has the right to request certain information collected and held by the federal government. Tribes are concerned that members of the public may seek FOIA requests as a way to bypass Section 304 and ARPA restrictions and obtain information and access to significant cultural sites. One recommendation for dealing with concerns relating to FOIA would be for agencies to request a FOIA exemption for information relating to sacred sites. Congress would have to pass specific legislation outlining that the Secretary would have the authority to apply the FOIA exemption to certain information relating to tribal cultural resources. For example, the FOIA exemption for the Department of the Interior might say, “the Secretary of the Department of the Interior shall not disclose under section 552 of title 5, of United States Code (FOIA) information relating to human remains and cultural items, resources, cultural items, uses or activities that have traditional or cultural purposes and are provided to the Secretary by an Indian or Indian tribe under expressed

expectation of confidentiality.”<sup>63</sup> A precedent for this type of exemption already exists. The U.S. Forest Service received a FOIA exemption for information gathered by the agency relating to tribal cultural resources. Exemptions for other agencies could be modeled on the one given to the Forest Service, which was included in the 2008 Farm Bill (P.L. 110-246).

Another way to address concerns over confidentiality would be to develop agency guidelines for confidential information relating to culturally sensitive information. The guidelines would state that agencies do not need to know all the details of religious or cultural practices associated with traditional cultural sites for an area to be understood as culturally significant. Researchers and federal employees interacting with tribes should be sensitive about gathering information tribal members consider sensitive. This would help demonstrate to tribes that federal employees are respectful of their belief systems and are willing work with tribes to accommodate their needs. Also, these guidelines could include provisions explaining to agency personnel that sites do not need to be specifically pin-pointed, or pointed out, but instead general areas could be referenced as a way of preserving confidentiality while also allowing for agencies to take sensitive areas into consideration for planning purposes. Additionally, sites may be entire landscapes rather than a specific place. It is important that any revised guidelines include provisions for consultation with the tribes because only tribes can identify places that are sacred to their culture. It is also important that guidelines encourage ongoing and regular dialog between federal land managers and tribes so that land managers develop trusting relationships with the tribes and better understand the nature of the sites in question. Agency guidance or

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<sup>63</sup> Language based on the FOIA exemption language included in the 2008 Farm Bill for U.S. Forest Service

policy should also include training for personnel. The best way to improve the relationship between the federal government and the tribes is to improve the cultural understanding of federal officials working directly with the tribes. Any new policies should include training provisions for consultation practices and cultural site information sensitivity.

The second area of interest for tribal cultural preservation is that national policy should be development to protect tribal intellectual property (IP) rights. Intellectual property law gives owners certain creative rights to both tangible and intangible works, such as musical, literary, and artistic works as well as words, phrases or designs.<sup>64</sup> Within Indian country there seems to be a desire for federal policy that recognizes tribal rights to intellectual property not only for the traditional arts and crafts created by tribal members, but also for oral traditions and traditional knowledge of the environment held within the tribal community. For instance, the protocol for research established by the Hopi Tribe states that informed consent is required for any project on tribal lands involving Hopi intellectual resources. Additionally, “informants and subjects of a project or activity should be ‘justly compensated’, which could include ‘acknowledgement as author, co-author or contributor, royalties, copyright, patent, trademark, or other forms of compensation.”<sup>65</sup> A federal policy should be developed to recognize and respect the IP rights of native peoples. The policy should protect tribes from the misuse of traditional knowledge by those conducting research, and also prevent the use of tribal

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<sup>64</sup> World Intellectual Protection Organization, *What is Intellectual Property*, January 23, 2012, <http://www.wipo.int/about-ip/en/>.

<sup>65</sup> World Intellectual Property Organization, *The Hopi Tribe's Protocol for Research, Publications, and Recordings*, January 23, 2012, [http://www.wipo.int/export/sites/www/tk/en/culturalheritage/casestudies/hopi\\_protocols.pdf](http://www.wipo.int/export/sites/www/tk/en/culturalheritage/casestudies/hopi_protocols.pdf).

art and craftwork without tribal permission. Federal policy should also work to implement regulations for trademarking tribal arts and crafts as outlined in the Indian Arts and Crafts Act of 1990. While the Act was passed in 1990, regulations relating to how trademarking will actually be carried out have yet to be finalized by the federal government. The trademarking process for the tribes' remains at a standstill until these regulations can be promulgated. It will be important for the federal agencies drafting the regulations to ensure that the trademark registration process does not place an undue administrative burden on the tribes or tribal members. While it is important to get the trademarking process in place, it is also important for federal officials to keep in mind that tribal administrations already respond to multiple federal bureaucratic processes, and may not have the capacity to handle a complex application or justification process. Therefore, it is important for the trademarking process to be straightforward and streamlined so as not to unduly burden tribal craftspeople.

It is clear that the federal government has made significant progress over the last twenty-two years, however, much work still needs to be done in order for the federal government to assist tribes in meeting their cultural preservation needs. Through the analysis of the recommendations it is clear that federal agencies are more aware of their responsibilities and have become more responsive to tribes. The following chapter will look at two specific grant programs administered by the National Park Service and focused on funding tribal preservation projects. The chapter includes discussions on the contributions that these grant programs have made to cultural preservation, and considers the future funding needs and priorities that the National Park Service and tribes will face in the 21<sup>st</sup> century.

## Chapter 4: National Park Service Historic Preservation Fund

### Tribal Grants

*We never had poverty before. We never had trouble with alcohol. We had full productive lives. And you know what we have learned? The only way to restore the balance we once had is to use traditional means: the family, the medicine men, the ceremonies, the dances. And we are finding ways to do that.*<sup>66</sup>

*-Hopi tribal member*

As is evident from the review of the *Keepers of the Treasures* recommendations, cultural and language preservation and the protection of traditional lifeways is of utmost importance to tribes. The recommendations focus on the need for the adaptation of federal preservation programs in order to better assist tribal cultural preservation efforts. As discussed in the previous chapter, grant programs administered by NPS have helped to fulfill many of the recommendations. Within the NPS there are two main grant programs that provide direct funding to tribes for cultural preservation: Tribal Project Grants and Tribal Historic Preservation Office (THPO) Grants. Each program provides funding for different aspects of cultural preservation, and each grant serves different tribal populations. Therefore, both grant programs, taken together or separately, provide essential funding to tribes to preserve their cultural traditions and lifeways.

This chapter examines each program, providing a brief overview and a discussion of the populations they serve, and analyzing the types of projects funded by the program. The analysis will also include a brief discussion of changes that

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<sup>66</sup> Charles Wilkinson, *Blood Struggle* (New York, NY: W.W. Norton and Company, 2005), 297.

could be made in the grant program in order to better serve tribal grantees. This report focused on an internal review of the NPS grant program based on interviews with NPS staff members familiar with the programs and NPS grant data. Due to time constraints, tribes that participate in these grant programs were not interviewed for this report. Outreach to both participating and non-participating tribes would be essential in order to gain a more complete perspective on the grant programs.

## **Tribal Project Grant Program**

### **Overview**

The Tribal Project Grant program is funded through the Historic Preservation Fund (HPF) from monies appropriated by Congress on an annual basis. Each year a certain amount of the HPF is allocated by NPS for grants to American Indian tribes, Alaska Native groups and Native Hawaiian Organizations for projects relating to historic/cultural preservation. The first Tribal Project Grants were given out in 1990. According to NPS staff familiar with the creation of the program, the development of the grant program occurred almost simultaneously with the publication of *Keepers of the Treasures*. Many of the NPS staff working on *Keepers of the Treasures* were also intimately involved in the development of this grant program.

Tribes submit applications to the Tribal Project Grant program in the following categories: locating and identifying cultural resources; preserving historic property listed on the National Register; comprehensive preservation planning; oral history and documenting cultural traditions; and education and training for building a historic preservation program. Tribal Project Grants are competitive, and funded on an annual basis; grant applications and grant guidelines are mailed to tribes in the fall.

Grant applications are due in the spring and NPS then assembles a panel of 10-12 subject matter experts to review each application. The panelists evaluate the applications and determine if proposed projects address a critical historic/cultural preservation issue, are well designed, have qualified people carrying out the project, have a reasonable budget, have the commitment of the tribe, and if the project will have a lasting impact. Based on these criteria, the applications are then scored and grant awards announced in the late spring/early summer. Grants are awarded on a two-year funding cycle, thus, tribal entities have approximately two years in which to disburse the grant money and complete their project. Since 1990, over \$20.5 million has been awarded under this program to approximately 556 Indian, Alaska Native and Native Hawaiian communities.<sup>67</sup>

### **Projects Funded**

Since 1990, numerous changes have occurred in the grant guidance and categories for preservation funding within the Tribal Project Grant Program. The biggest change occurred in 1997 with the addition of the current categories. Prior to 1997, the grant awards were based on a list of NPS priorities. For example, in 1996, Priority #1 was establishment of three to five pilot tribal historic preservation programs to assume all or part of State Historic Preservation Officer responsibilities; Priority #2 was inventory and planning projects; Priority #3 was cultural needs assessments; Priority #4 was documenting your community traditions; and Priority #5 was museum, archives, and collections management. Grant applications were then judged and funded based on these priorities. Therefore, grants applications submitted

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<sup>67</sup> National Park Service, *A Report on Fiscal Year Historic Preservation Fund Grants to Indian Tribes, Alaska Natives and Native Hawaiians*, (Washington, DC: Tribal Project Grant Program, 2011).

under Priority #1 were much more likely to be funded than applications for Priority #5. While tribal input is reflected in the funding categories, tribes were reliant on NPS priorities to receive funding for cultural preservation under this grant program.

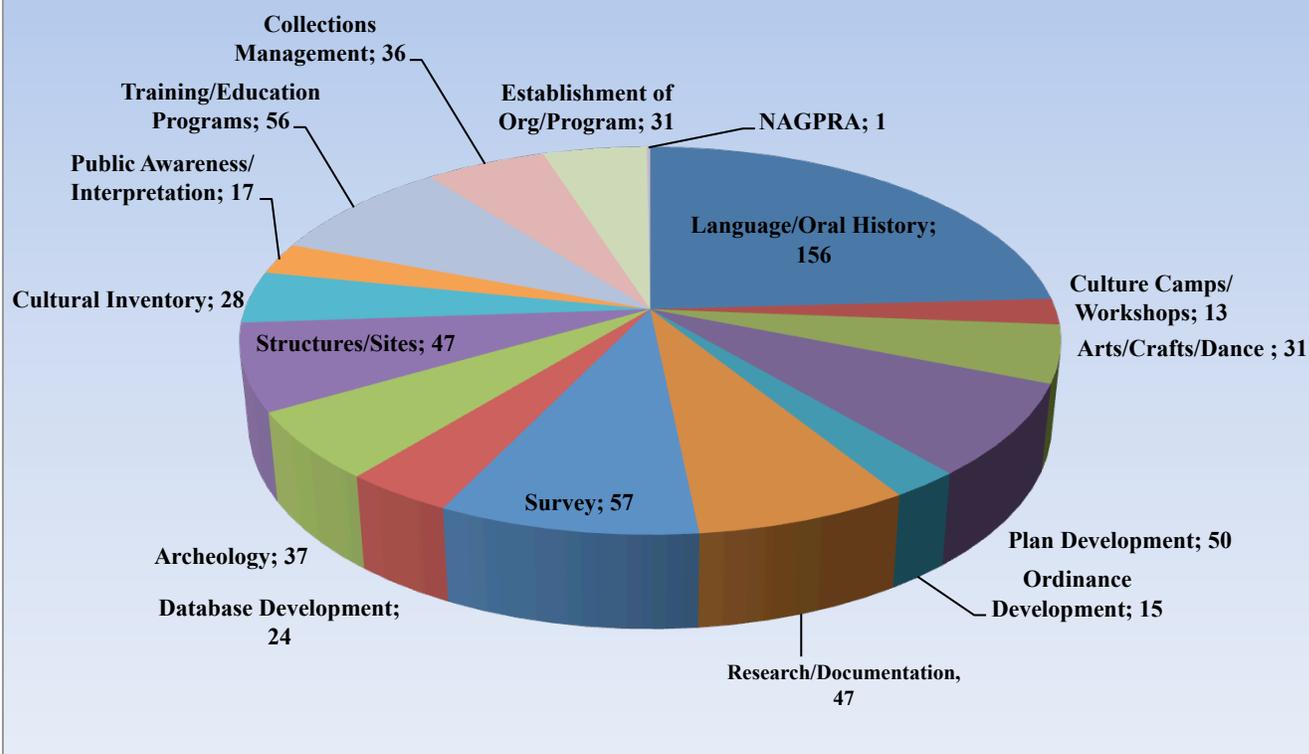
In addition to doing away with the previous set of priorities and setting new funding categories, the program also reassessed how the total amount of program funding for the program is allocated. Allocations to each category are now based on the percentage of requests in each category. For instance, if fifty percent of the applications fell under the category of oral history and documenting cultural traditions then fifty percent of the projects funded for that year would go to projects in that category. This change allowed the grant program to better reflect the priorities of the tribes rather than the priorities set by NPS.

The changes in the categories and in the funding allocation show that NPS has worked over the years to change and adapt its grant program to better reflect tribal preservation interests. While most HPF grants only allow funding for preservation projects related to buildings on the National Register, Tribal Project Grants have allowed funding for oral history and documenting of cultural traditions. One of the key points in *Keepers of the Treasures* was that tribes were more interested in the preservation of lifeways, both tangible and intangible (arts, crafts, language, dance, etc.), than they were in preserving the built environment. The Tribal Project Grant program has funded projects in over 556 tribal communities, and many of those projects are reflective of the priorities set out by the tribes in *Keepers of the Treasures*.

To better understand the impact Tribal Project Grants have had on cultural preservation, five funding categories (locating and identifying cultural resources;

preserving historic property listed on the National Register; comprehensive preservation planning; oral history and documenting cultural traditions; education and training for building a historic preservation program) were broken down into the following types: language/oral history projects, culture camps and workshops, documentation of tribal arts/crafts/dance, preservation plan development, preservation ordinance development, research and documentation of sites or structures, survey, data base development, archeology, stabilization and documentation of sites or structures, cultural inventory, public awareness/interpretation, training programs, collections management, establishment of an organization/program, and NAGPRA.

**Table 3: Number of Tribal Project Grants Awarded by Type 1990- 2011**



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As noted in Table 3, the language and oral history type contains the most Tribal Project Grants funded over the last 22 years. The language/oral history type includes projects that focus on recording and documenting tribal stories as told by elders, the creation of a dictionary for native languages, recordings of the last fluent speaker of a native language, and documentation of tribal names for plants and geographic areas. Many of the language/oral history grant awards were for the documentation of place names and the creation of maps with these names. The sheer volume of funding for these types of projects shows that NPS is responding to tribal needs and desires. In *Keepers of the Treasures* and other preservation forums, tribal

<sup>68</sup> Data compiled from National Park Service, *A Report on Fiscal Year Historic Preservation Fund Grants to Indian Tribes, Alaska Natives and Native Hawaiians 1990-2011* (Washington, DC: Tribal Project Grant Program, 1990-2011).

members have consistently stated that preservation of language is a high priority for tribal communities. Preserving place names is a way to reintroduce native language into everyday tribal life, and it additionally serves as a way to connect modern tribal members to places that were important to their ancestors. As one member of the Confederated Salish and Kootenai Tribes describes it, “The Salish and Kootenai language are the windows to our past. The place names are descriptive; they can tell us about an event that happened at this place, they tell us about a plant that was harvested or gathered at a certain location.”<sup>69</sup>

Tribes are also extremely interested in training and education programs for cultural preservation. After the survey grants, which fund both archeological surveys and surveys of the built environment, education and training ended up being the third largest type of grant distributed by the Tribal Project Grant program. Consistently, tribes have asked the federal government for training opportunities, particularly in the area of Section 106 documentation and review. The Tribal Project Grant program has responded to this request by consistently funding grants that pay for tribal members to travel to and attend training sessions. Other projects that were funded in this type also include workshops led by tribal members to train community members in preservation skills. Education and training has remained a high priority for tribes and has been a consistently funded type of grant through the Tribal Project Grant program.

While culture camps/workshops make up a small percentage of the total number of grants, these projects have served as a way to document traditions and pass

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<sup>69</sup> Marcia Pablo, "Preservation as Perpetuation," *American Indian Quarterly* 25, no. 1 (2001): 19.

them on to the younger generation.<sup>70</sup> The grant program has seen a decline in the number of culture camp requests since the Tribal Project Grant program first started. Between 1990-1999, NPS awarded nine grants for culture camps/cultural workshops. Whereas, between 2000-2011 only four grants have been awarded for this type of activity. NPS grant staff acknowledged that the program received many requests for this type of grant in the beginning, but in recent years fewer and fewer requests. Tribes may be funding their culture camps through other grant sources or by other tribal resources, which could be one explanation for the decline in requests. The drop in culture camp requests could also be tied to the redesign of the Tribal Project Grant categories. These types of grants do not fit as neatly into the categories as would an oral history project. A survey of tribes participating in the grant program would be necessary in order to fully understand why requests for culture camp projects have decreased. Arts/craft/dance work is another small subcategory, however, this type of project can also fit within the oral history and documenting cultural traditions category. Many of the projects funded in this category involve documenting, either through video or still photography, different craft art skills (e.g., basket weaving or pottery), craft skills (e.g., carving sea canoes) or dance traditions. Some of these projects also have an oral history component. While the documentation of the craft is taking place there will also be an effort to record the tribal stories associated with the craft or document the craft process in the native language. These types of projects have been consistently funded throughout the life of the Tribal Project Grant

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<sup>70</sup> Culture camps/cultural workshops typically are held in the summer and paired groups of young tribal members with tribal elders. The camps serve as intensive workshops where the elders pass on their cultural knowledge to the younger generation.

program, and respond most directly to the tribal concerns conveyed in *Keepers of the Treasures* regarding the retention of lifeways.

Historic preservation plan and ordinance development, survey, archeology, and collections management are all straightforward grant types. These types of grants are also most closely associated with historic preservation work funded by NPS through HPF grants. This is also the type of work that NPS is most familiar with and in which it has the most subject matter expertise. Many tribes have expressed interest in taking over survey and archeological work within their tribal boundaries or on ancestral lands. Additionally, tribes are interested in controlling their own collections, and, with the passage of NAGPRA, many groups have established tribal museums. Many of the grants for collections management were for exhibit design and for training of collections personnel in archival practices. Research and documentation projects range from the documentation of traditional lifeways to providing funds for tribes to research and document sites along tribal removal routes. The Tribal Project Grant program has consistently funded these diverse research and lifeway documentation projects every year. All but two years of the program, 1994 and 2002, had at least one project funded in this type.

Database development is another category that is of growing interest to tribes. Many tribes are interested in creating their own databases for sites of cultural significance, and the tribes are using these databases in the Section 106 process with federal agencies. Within the last 10 years, grants for database development have dropped off slightly (as shown in Table 3 below). The drop is likely related to funding opportunities through the THPO grant program for this type of project.

As noted in *Keepers of the Treasures*, tribes are not as interested in the preservation of buildings as they are in other aspects of cultural preservation. This is reflected in the small number of grants made for specific structures and site work. The projects which fit into this type ranged from the evaluation and documentation of sites of cultural significance (e.g., a 2004 grant to the Zuni Pueblo to document damage to the Village of the Great Kivas) to revegetation and stabilization from erosion for tribal burial grounds.<sup>71</sup> Additionally, many of the requests for funds to stabilize buildings on tribal lands were related to the desire to use the buildings for heritage centers or tribal museums. Many of the tribes seek to turn former BIA buildings into centers for tribal preservation and are reaching out to the federal government to get these buildings on the National Register as a way to access grants for rehabilitation.

In contrast to funding for sites and structures, the grant program has also funded projects that were grouped as cultural inventory, public awareness/interpretation, and the establishment of organizations/programs.<sup>72</sup> The cultural inventory projects were typically conducted early on in a tribe's preservation program in order to establish a baseline of traditional cultural knowledge. These types of projects have assisted tribes by helping them to prioritize cultural preservation, and this has allowed them to focus their resources on the most pressing needs. Public awareness/interpretation projects were generally focused on educating the general

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<sup>71</sup> National Park Service Tribal Project Grants, *Fiscal Year 2004 Historic Preservation Fund Grants to Indian Tribes and Alaska Natives and Native Hawaiian Organizations*, (Washington, DC : National Park Service, 2004), 9.

<sup>72</sup> Cultural inventory grants involved tribes determining which tribal members possessed traditional arts/crafts skills, traditional knowledge, and language skills. Public interpretation/awareness focused on developing traveling exhibits or publications about a tribe's traditions or history as a way to educate the general public about the tribe.

public. While most of the grants funded through the Tribal Project Grant program are inward looking and serve the tribes themselves, those that fit into the public awareness/interpretation type are more outward looking and meant to educate the outside world about the tribe. The Tribal Project Grant program has also helped to fund the establishment of preservation organizations/programs. From 1991-1994, the Tribal Project Grant program helped to fund a national tribal preservation program called *Keepers of the Treasures*. Additionally, in the years following the implementation of the THPO program, the Tribal Grant Program provided funding for 16 different tribes to establish THPO programs. Some of the grants in this type also funded the creation of tribal preservation boards and cultural committees.

Lastly, over the past 22 years, the Tribal Project Grant program has funded only one grant relating to NAGPRA. The grant was to establish a NAGPRA coordinator position at an Alaska Native Corporation. While NAGPRA issues continue to be of great importance to tribes, the passage of the legislation in 1990, authorized the creation of a grant program to assist tribes in funding NAGPRA related activities. The current Tribal Project Grant guidelines specifically state that funding provided by the program cannot be used for NAGPRA projects.<sup>73</sup>

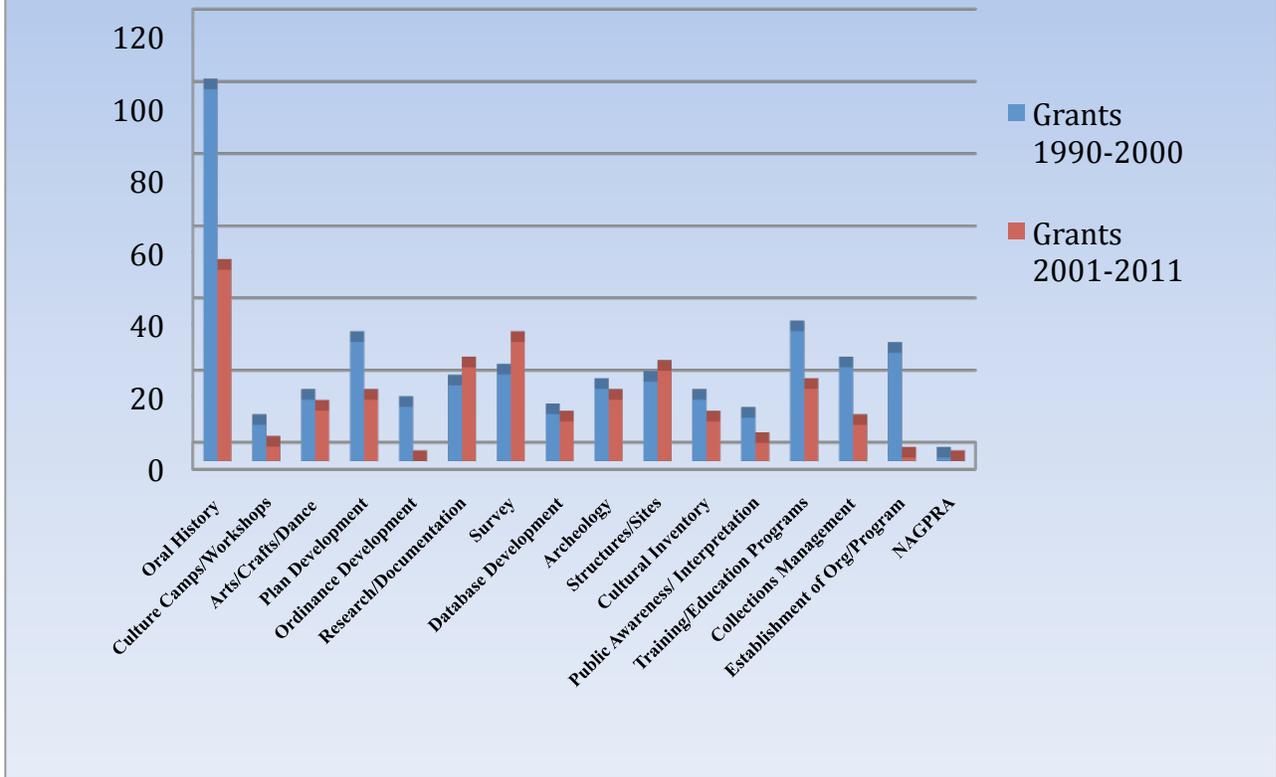
The projects funded through the Tribal Project Grant Program have been diverse and when broken down by type, it is much easier to see the areas of cultural preservation impacted by these grants. The Tribal Project Grant Program has consistently funded projects that are of importance to tribes, reflecting specific tribal priorities. Table 4 shows the change in projects funded between the first ten years of

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<sup>73</sup> National Park Service, *Fiscal Year 2012 Historic Preservation Fund Grant to Indian Tribes, Alaska Natives, and Native Hawaiian Organizations: Grant Program and Application Instructions*, (Washington, DC: Tribal Project Grant Program, 2012).

the program and the last ten years. It is important to note that the overall decrease in projects is related to decrease in funding for the program, a topic that will be explored further in the next section.

**Table 4: Comparison of the Number of Tribal Project Grants funded 1990-2000 and 2001-2011 by Sub-Category**



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### Analysis of Funding

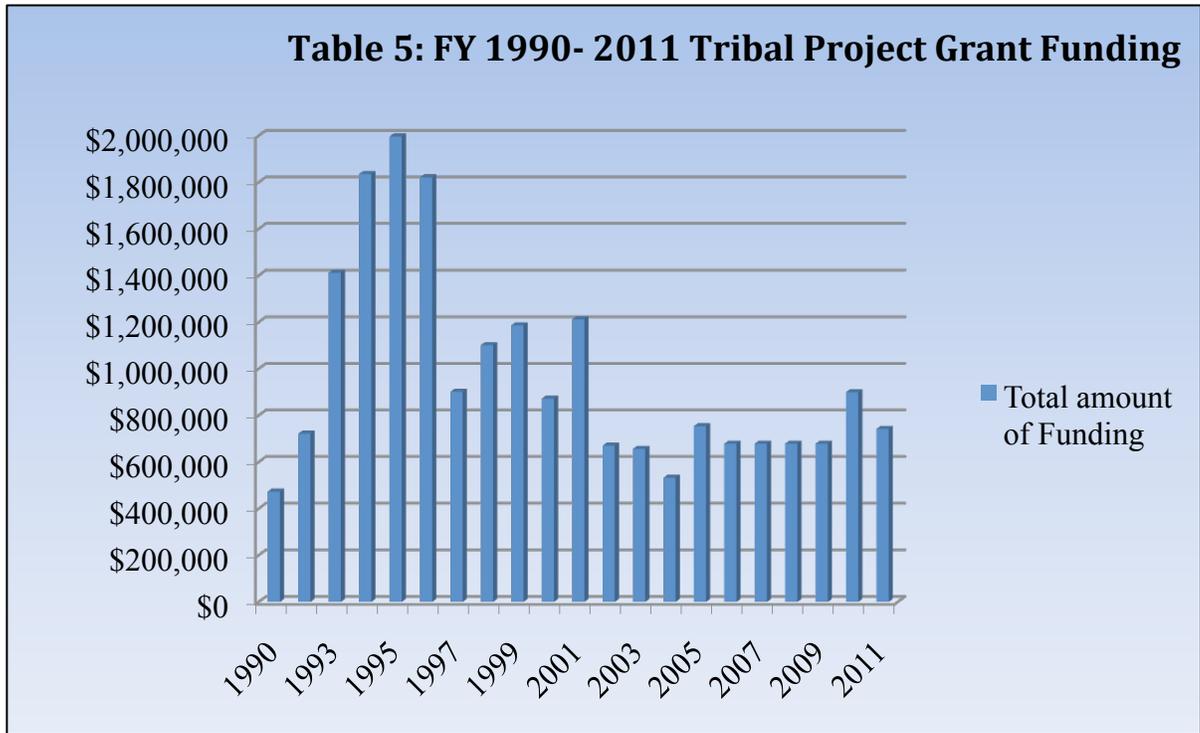
Since the beginning of the Tribal Project Grant program, the total amount allocated to the program from the HPF has fluctuated. Since the grant program is not a line item in the NPS budget, the programmatic allotment is at the discretion of NPS and changes based on cuts or increases in the HPF appropriation. Funding for the

<sup>74</sup> Data compiled from National Park Service, *A Report on Historic Preservation Fund Grants to Indian Tribes, Alaska Natives and Native Hawaiians 1990-2011* (Washington, DC: Tribal Project Grant Program, 1990-2011).

Tribal Projects Grant program reached its peak in 1995 with \$1.9 million, and saw its lowest level in 1990 with \$473,000 (Table 5). This fluctuation also affected the number of tribes funded through the program. In 1990, 15 tribal communities received funding compared to the 49 communities that were funded in 1995. Over the past few years the overall allocation for the grant program has been between \$650,000-750,000 with an increase up to almost \$900,000 in 2010. With this amount of money the grant program has typically funded between 15-20 communities each year with an increase to 26 communities funded in 2010. The maximum award given in 2012 to an individual project will be \$40,000 and the minimum will be \$5,000.<sup>75</sup> The maximum amount in previous years was \$50,000-60,000. Occasionally projects will receive funding in two separate grant cycles, but most projects are single awards. In years when funding to the program has increased, the average grant amount has increased to \$50,000-\$60,000. Based on the nature and complexity of the project this is generally enough funding to hire a staff member to carry out the project or to contract with professional organizations or universities to fulfill the project.

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<sup>75</sup> *ibid*



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As mentioned above, the decline in funding has affected the overall number of grants being given out. From 1993 to 1996 the grant program awarded 40-50 grants a year. With the reduction to \$900,000 in 1997 the program was only able to fund 27 projects. Since 2000, funding for Tribal Project Grants has stabilized, but is less than half of what was available in the mid-1990s. This accounts, in part, for the drop-off in the number of grants within each grant type mentioned above. The cut in 1997 can also be attributed to the first full year of funding for the newly established THPO grant program. At that time, the HPF allocation was divided between the two programs. As the number of THPOs grows (the THPO grants are not competitive), funding for the Tribal Project Grant program is shrinking.

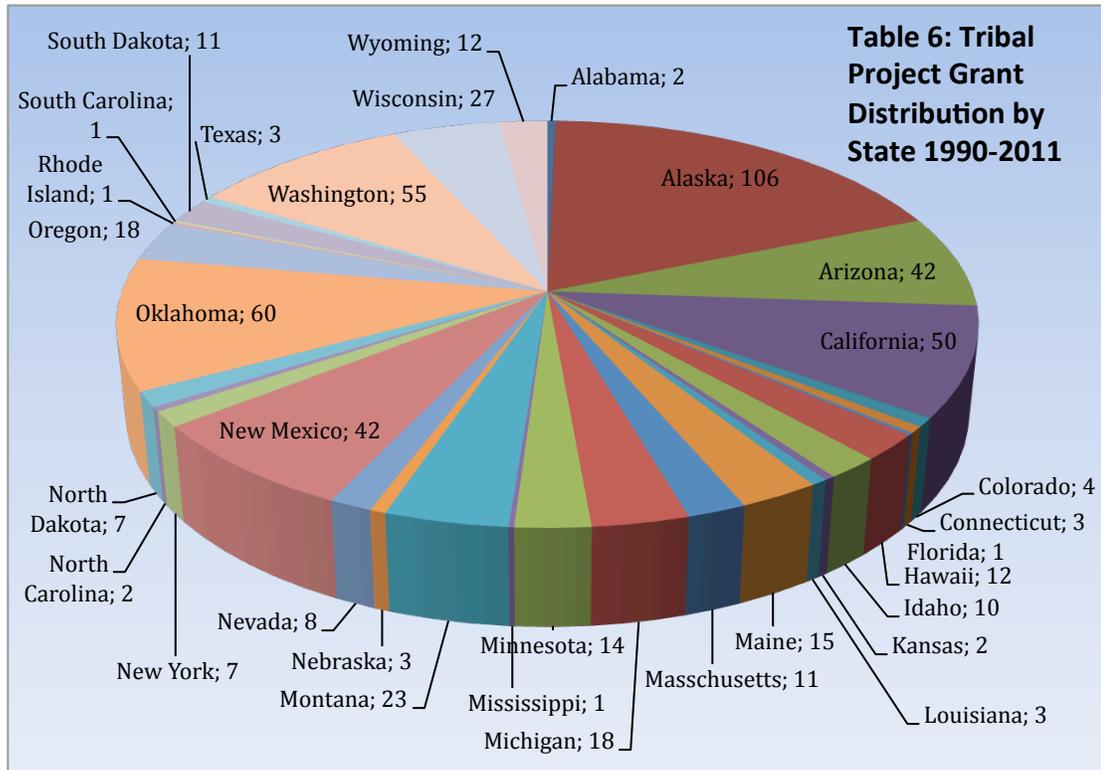
<sup>76</sup> Data compiled from National Park Service, *A Report on Historic Preservation Fund Grants to Indian Tribes, Alaska Natives and Native Hawaiians 1990-2011* (Washington, DC: Tribal Project Grant Program, 1990-2011).

While the funding levels may not be what they once were, it is clear that the Tribal Project Grant program fills some very specific funding needs for tribal cultural preservation programs because it is not tied to the same requirements as the THPO program. Unlike the THPO program, the Tribal Grant program does not require tribes to have land holdings in order to qualify for funding. Most Alaska Native Villages and Corporations, and all Native Hawaiian Organizations are excluded from participating in the THPO program because they do not have tribal trust lands. Likewise many tribes in the lower forty-eight states don't have tribal trust lands, and thus lack access to the consistent funding provided by the THPO program. Therefore, the Tribal Project Grant program is important to cultural preservation efforts not only for the types of projects it funds, but also because it serves tribal communities that might not otherwise have access to cultural preservation funding. The program is also much more flexible in its ability to fund the cultural preservation needs of native communities than other NPS programs. While not all grant programs are available to the each tribal entity, the Tribal Project grant program is open to a wide range of native communities.

In conducting an overall analysis of funding provided by the Tribal Project Grant program, one of the questions considered was the geographic distribution of the NPS tribal grants. As might be expected, the break out of funding by geographic areas indicates that many of the Tribal Project Grants are going to regions with a large tribal presence (Table 6). States like Alaska (226 federally recognized Alaska Native Villages and Corporations), California (107 federally recognized tribes), and Washington (29 federally recognized tribes) received a high percentage of the funding for this grant program. This can be explained by the fact that the greater the

number of tribes in a given area the more likely it is that you will have multiple applications from that area and therefore the greater likelihood that one or more of those applications will be successful. It is also possible that greater concentrations of tribes in one area provides opportunities for capacity sharing and access to resources (e.g. university programs, archeological data), and through this increased access they would generate more successful applications. However, a large number of tribes concentrated in one area is not necessarily an absolute indicator of success. California has over three times as many federally recognized tribes as Washington, yet the tribes in Washington have been slightly more successful in receiving Tribal Project Grant funding. The reason for this discrepancy could be that many of the California tribes are very small Rancherias with little or no landholdings and very small tribal membership. These smaller tribes may not have the capacity to apply for Tribal Project Grant projects. In contrast, many of the Washington tribes have large membership rolls, extensive landholdings, and are able to participate in the THPO program, and therefore, have a greater capacity to develop successful grant applications.

NPS staff interviewed for this paper indicated that they thought that studies would show that THPO tribes would have a higher rate of success for grant awards than non-THPO tribes. They pointed out that with the creation of the THPO program, tribes that have become THPOs have built their capacity and are generating successful applications because they are able to have at least one dedicated staff member working on cultural preservation.



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While being a THPO is not a determining factor in the review process for Tribal Project Grants, and certainly many tribes who are not THPOs receive funding through the program, it appears that being a THPO helps in the successful execution of the projects. A full analysis and comparison of the grant success rate of THPO versus non-THPO tribes is a complex question, which would require a study designed to control for when tribes joined THPO program and comparing that data to the years in which they received Tribal Project Grants. Additionally, it would be important to control for the number of Alaska Native Villages and Corporations and Native Hawaiian Organizations that apply to the program. There are 226 federally recognized Alaska Native entities and numerous Native Hawaiian Organizations,

<sup>77</sup> Data compiled from National Park Service, *A Report on Historic Preservation Fund Grants to Indian Tribes, Alaska Natives and Native Hawaiians 1990-2011* (Washington, DC: Tribal Project Grant Program, 1990-2011).

which do not qualify for the THPO program, compared to roughly 131 THPO tribes, further complicating the success rate question.<sup>78</sup>

Additionally, the mission of the Tribal Project Grant program is to assist tribal preservation programs with specific and targeted preservation projects. With funding levels at around \$700,000 year, the grant program is not in a position to fund long-term multi-year projects, nor can it serve as a consistent stream of funding on an annual basis for tribal cultural preservation. Yet, the program has a proven track record of providing funding to tribes for designated cultural preservation projects. The projects that are funded through this grant program seem to be short-term, targeted programs that can be completed in one to two years, and have specific end products.

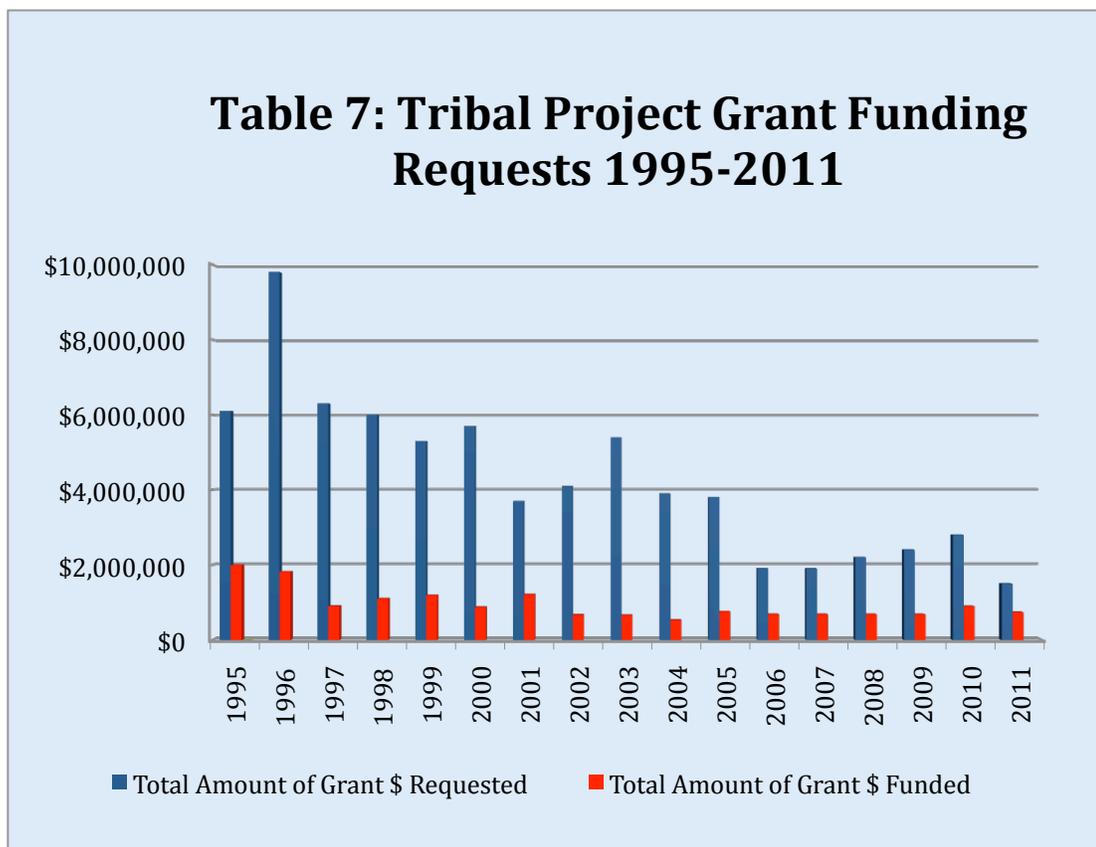
**Recommendations:**

The main recommendation for almost any grant program is the need for additional funding, and the Tribal Project Grant program is no different. As would be expected, in the years that funding increased, the program was able to distribute more grants and assist a greater number of tribal communities. Conversely, when funding was decreased there was a decrease in grants awarded. There is also a demonstrated need for increased funding because the Tribal Project Grant consistently receives funding requests that exceed the grant program's annual allocation from the HPF (Table 7). Greater funding would mean a more reliable and consistent source of support for tribal cultural preservation projects for a wider range of tribal communities.

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<sup>78</sup> Due to time constraints this question simply fell outside the scope of this paper.

**Table 7: Tribal Project Grant Funding Requests 1995-2011**

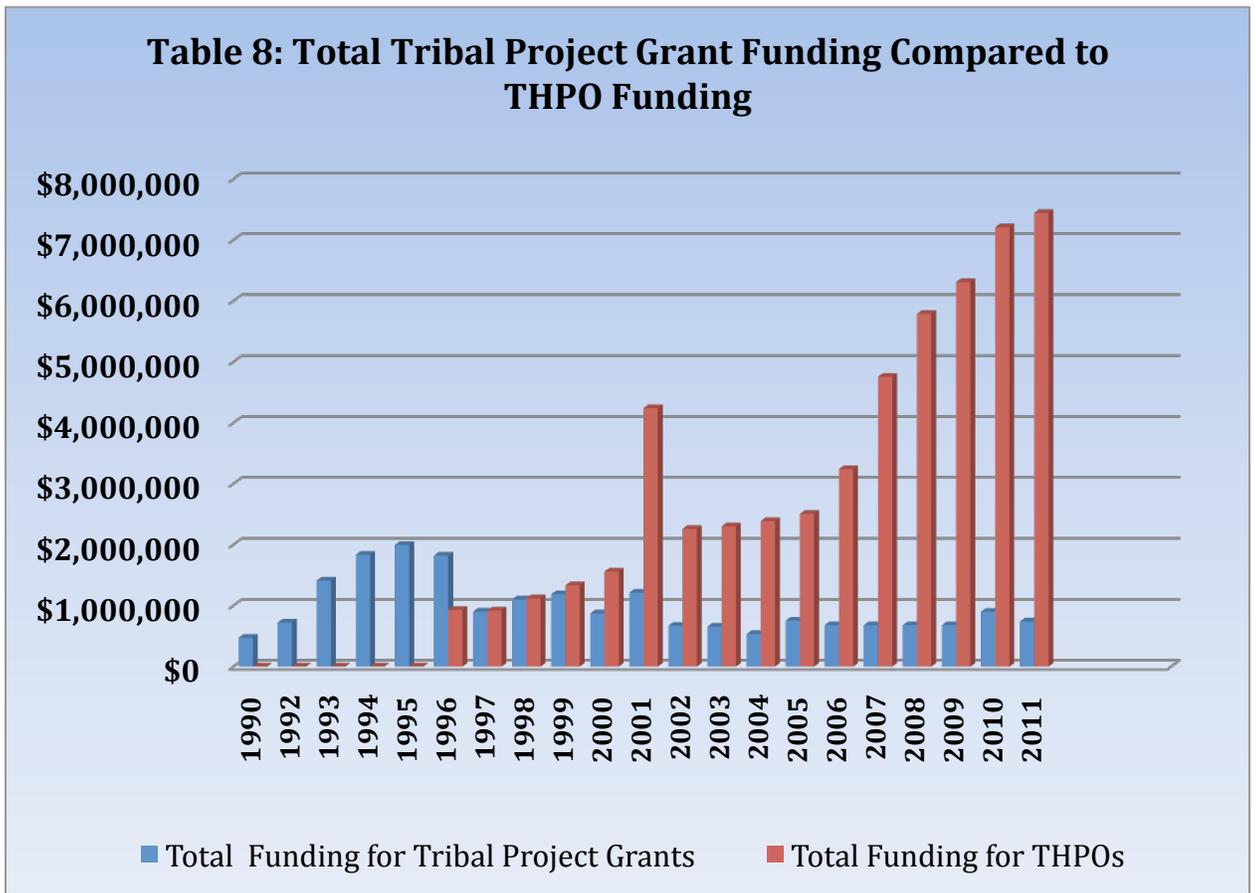


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Additionally, the Tribal Project Grant program would benefit from being independently funded through the HPF rather than being tethered to the THPO program. Both programs are funded through the Tribal line-item in the HPF. In the first few years of the THPO program, it may have made sense to fund tribal preservation grants through one allocation, but that is no longer the case. As the THPO program has grown, it is slowly taking away funding from Tribal Project Grants (Table 8). As will be discussed below, this sort of funding allocation is not beneficial for the THPO program either. By splitting out these two programs, NPS could highlight their commitment to funding cultural preservation as something that

<sup>79</sup> Due to turnover in grant staff and inconsistency in record keeping for the early years of the Tribal Grants program the total amount requested by the tribes for 1990-1994 is not available. The grants staff now maintains records on an NPS database to ensure consistency in the information being gathered.

is uniquely different than the preservation projects they fund in other grant programs. For example, the bricks and mortar grants funded through Save America’s Treasures and Preserve America programs, or site preservation grants funded through the American Battlefield Protection Program. Separating out the two grant programs, would also raise the profile of these two unique funding options and allow them to better serve the cultural preservation needs of tribal communities.



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Aside from increasing the amount of funding for the Tribal Project Grant program, NPS could make changes in the grant guidelines to allow funding for different kinds of preservation projects. For instance, Tribal Project Grants can’t be

<sup>80</sup> Data compiled from National Park Service, *A Report on Historic Preservation Fund Grants to Indian Tribes, Alaska Natives and Native Hawaiians 1990-2011* (Washington, DC: Tribal Project Grant Program, 1990-2011) and from Tribal Historic Preservation Office Program funding data 1996-2011.

currently used to fund language retention programs. As language retention is a high priority for tribes it would be beneficial to provide an additional funding stream to maintain language programs within tribal communities. Also, if any change in guidelines were to take place, it would be important to survey the tribes and tribal preservation programs to find out if there are other areas of cultural preservation that could be addressed through the grant program. The preservation needs of native communities may have changed in the last twenty-two years and new concerns may have arisen. The Tribal Project Grant program could benefit from feedback from the tribes about new priorities. This type of update to the guidelines would demonstrate to the tribes that NPS is aware of tribal concerns and responsive to tribal needs. The Tribal Project Grant has done a lot to help fund cultural preservation efforts within tribal communities, but still more could be done. With additional funding and updated grant guidelines the Tribal Project Grant program will be better equipped to support tribal cultural preservation projects in the 21<sup>st</sup> century.

### **Tribal Historic Preservation Office (THPO) Program**

#### **Overview**

The THPO program was first authorized in the 1992 Amendments to NHPA as an agreement between Native American tribes and the Department of the Interior to accept certain preservation responsibilities as outlined in the act. The program did not become fully functional until 1996 when NPS signed agreements with the first cohort of THPOs. In that first year, 12 tribes formally accepted one or more preservation responsibilities on tribal lands. The THPO program was seen as a way for federally recognized tribes to directly access federal historic preservation

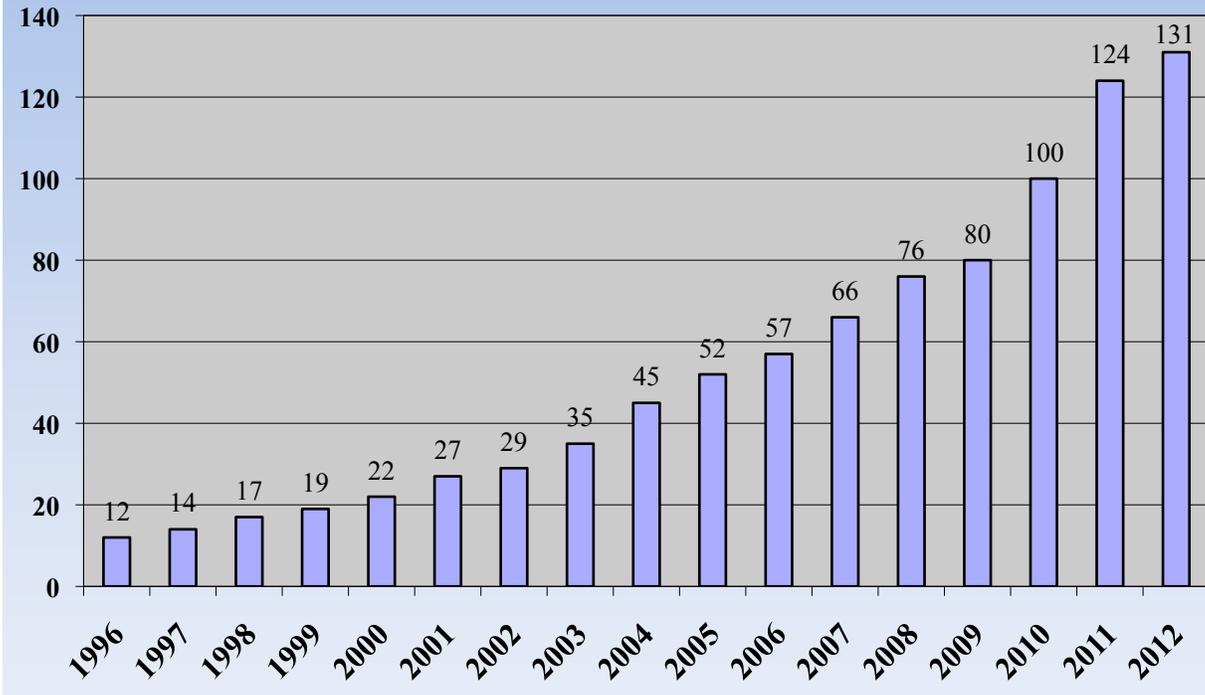
programs and resources, and is modeled on the State Historic Preservation Office (SHPO) programs run in all fifty states. *Keepers of the Treasures* recommended the creation of programs that would allow tribes to access federal programs on their own terms. What was envisioned in *Keepers of the Treasures* was a program, that was separate and apart from SHPO programs, specifically created to serve tribal communities' historic preservation needs.<sup>81</sup> Rather than designing a new program focused on tribal needs, the THPO program adapts an existing program to fit tribal needs.<sup>82</sup> This isn't to say that the THPO program has not been effective or beneficial for tribes. In fact, the program has added an average of six or seven THPOs a year, and by the end of 2012, 131 tribes will be participating in the THPO program (Table 9).

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<sup>81</sup> Bryan Mitchell, National Park Service Heritage Preservation Services, interview by Rachel Brown, (October 3, 2011).

<sup>82</sup> *ibid*

**Table 9: THPO Program Growth 1996-2012**



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While there are great benefits associated with becoming a THPO, there are also some limitations placed on the program. Not all federally recognized tribes can become THPOs due to the requirement that all THPO tribes must possess tribal lands within the boundary of an Indian reservation or have lands considered to be a dependent community. This means lands must be held in federal trust for the benefit of the tribe, primarily, reservation lands in the continental United States. While this requirement may make sense at face value, the reality is that it excludes many tribes from accessing funding and other benefits that come with being a THPO.

All but four Alaska Native Villages and Corporations are excluded from the program due to the way their landholdings were designed under the Alaska Native Claims Settlement Act (ANCSA). ANCSA allows Native Villages and Corporations

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<sup>83</sup> Table courtesy of the National Park Service Tribal Historic Preservation Program.

to hold title to lands for tribal members under state law. This means that in the eyes of the federal government the lands in Alaska are not held in trust by the federal government and therefore do not qualify as lands within an Indian reservation.

Many smaller tribes in the lower forty-eight states are also excluded from the THPO program based on landholding. For example, many of the Rancherias in California lost all of their lands during termination, and while federal recognition has been restored for some of these tribes they have not regained their lands. Native Hawaiian Organizations are also not eligible for the THPO program because they are neither federally recognized tribes nor do they have landholdings held in federal trust.<sup>84</sup> While many tribes wish to participate in the THPO program, the federal regulations regarding tribal lands make this difficult or impossible.

In order to become a THPO, a tribe must sign a formal agreement with NPS and the Secretary of the Interior. The tribe begins the THPO process by sending a written request to assume SHPO responsibilities to NPS, and also submits a program plan to NPS.<sup>85</sup> These documents list which NHPA designated SHPO functions the tribe would assume from the State, and provide a description of how the tribe will perform the assumed functions. The documentation also includes a description of the tribe's current historic preservation program and how it will be utilized to carry out

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<sup>84</sup> Indian Tribes and Alaska Native entities are specifically mentioned in the federal definition of federally recognized tribes, however Native Hawaiian Organizations are not included in this legislative definition, and are therefore not considered to be federally recognized.

<sup>85</sup> Program includes a description of tribal lands, a description of program staff or consultants, a description of the tribal advisory review board to provide advice for the THPO, an explanation of participation for the tribe's traditional cultural authorities or other tribes who have shared interest in tribal lands, and an acknowledgement that any non-tribal land owners residing within tribal lands may request the participation of the SHPO for any decisions that may affect that property.

the SHPO function the tribe is assuming.<sup>86</sup> NPS staff provides technical support to tribes throughout the application process and can spend anywhere from six months to four years working with an individual tribe on the THPO application.<sup>87</sup> Once the application is complete and has been reviewed by NPS staff, it is sent to the Secretary of Interior's office for official approval and signature. When the tribe assumes the chosen THPO authorities, it becomes eligible for THPO grant funding.

It should be understood that the THPO program is fundamentally a partnership between NPS and the tribes and is not an agreement for grant funding. Funding for the THPO program is authorized in NHPA, but authorization does not always guarantee the appropriation of funds. The THPO program is not a line item in the NPS budget submitted to Congress each year, and thus is reliant on Congress appropriating funds for the HPF. The agreement between the tribes and NPS to carry out preservation responsibilities exists whether or not there is funding for the grant portion of the program.<sup>88</sup> A more complete description of the grant funding associated with the THPO programs follows later in this section.

### **Benefits, Responsibilities, Adaptation, and Trends**

There are a vast number of benefits associated with being a THPO, and tribes clearly recognized these benefits as evidenced by the rapid increase in the number of THPOs. One of the most significant aspects of the program is that tribes become recognized by the federal government as having the authority to administer sacred sites on their own lands. THPO tribes view the program as an expression of their

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<sup>86</sup> National Park Service Tribal Historic Preservation Office Program, *Tribal Historic Preservation Office Application*, February 1, 2012, [http://www.nps.gov/hps/tribal/tribal\\_manual/application.pdf](http://www.nps.gov/hps/tribal/tribal_manual/application.pdf). THPO application.

<sup>87</sup> James Bird, Tribal Historic Preservation Officer Program, Chief, interview by Rachel Brown, , (October 17, 2011).

<sup>88</sup> *ibid*

national sovereignty and right to cultural self-determination. As the current President of the National Association of Tribal Historic Preservation Officers stated, “All THPOs believe that their work is an active expression of tribal sovereignty as they assume the state historic preservation responsibilities for their respective tribal lands.”<sup>89</sup> Essentially, becoming a THPO means that government agencies cannot claim oversight of land use projects within the boundaries of the reservation. In fact, if agencies want to conduct work on a reservation they must consult with the THPO just as they would consult with the SHPO for projects conducted within specific states.

The THPO program has also been beneficial in terms of raising the profile and authority of tribes during consultation. Tribes have long felt that the federal government either has not appropriately consulted with them or that when consulted they were not given the same weight as the SHPO consultation. This was particularly distressing to tribes when consultations were related to traditional or sacred sites. The THPO designation is seen as putting tribes on a more equal footing with SHPOs. Additionally, some tribes felt that there were poor relationships between tribal entities and the SHPO, and that there was a lack of tribal cultural understanding among SHPO staff. Tribes also expressed concerns about the SHPO’s ability to keep sacred site information confidential. Today, many SHPOs have developed good relationships with the tribes, and SHPO staffs work closely with tribal members on projects that could potentially affect tribal resources. However, this improvement and cooperation does not diminish the need or importance of the THPO program.

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<sup>89</sup> Reno Franklin, "Testimony for Hearing on Issues Affecting Management of Archaeological, Cultural and Historic Resources at Mesa Verde National Park and Other Units of the National Park System," Subcommittee on National Parks, United States Senate (Washington, DC 2011).

Not only does becoming a THPO provide tribes with an authoritative seat at the consultation table, it also allows them to conduct their own surveys and archeological work, also many tribes now choose to maintain their own database of culturally significant sites. By taking over these responsibilities from the SHPO offices, tribes have assumed greater control of tribal information and tribal cultural resources. This has helped to alleviate some of the confidentiality concerns expressed by tribes relating to sacred sites. If the tribe holds the information within their own offices and it is not held by the SHPO, the information is not subject to FOIA requests and the tribe can control access to sensitive information. This also means that THPO tribes no longer have to rely on SHPO programs to carry out the federally mandated preservation responsibilities. Becoming a THPO allows tribes to manage their tribal resources in a culturally appropriate way.

NHPA specifies that THPOs can assume 10 specific preservation responsibilities. As noted above, when a tribe submits an application to become a THPO they must outline which responsibilities they intend to assume. Generally tribes choose to take eight of the ten responsibilities.<sup>90</sup> Some tribes may choose to take less than eight based on preservation interests and staff resources. None of the current THPOs have opted to take on all 10.<sup>91</sup> The most commonly accepted responsibility is NHPA Section 106 review. For the reasons mentioned above and for greater protection and control over tribal resources, tribes view this responsibility as essential. However, some tribes have found it difficult to comply with the Section 106

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<sup>90</sup> James Bird, Tribal Historic Preservation Officer Program, Chief, interview by Rachel Brown, (October 17, 2011).

<sup>91</sup> *ibid*

process because it does not align with tribal cultural practices. A member of the Confederated Salish and Kootenai, a THPO tribe, noted that it was,

“a tremendous challenge for those of us at the [Confederated Salish and Kootenai Tribes] Preservation Department to take this law [NHPA], which was developed outside our cultural construct, and critically study and analyze it through our culture’s lenses. The cultural anguish [caused by previous Section 106 work] has motivated us to create a culturally compatible Section 106 process that meets the law’s requirements of evaluation and eligibility and has eased our cultural and personal anxiety.”<sup>92</sup>

Even though tribes may encounter difficulties adapting the requirements of the federal Section 106 process, they still choose to take on the responsibility, as the benefit of being at the table and in control of their cultural resources outweighs the difficulties imposed by the process.

The second most commonly selected responsibility is conducting property surveys and maintaining and inventorying historic properties. The choice to take on the responsibility for property surveys can also be closely tied to accepting responsibility for the Section 106 process. Under Section 106, the effect of federally funded projects on all properties listed on or eligible for the National Register of Historic Place (National Register) must be fully considered before the project can begin. In order for the Section 106 process to be truly effective, the tribes must know where their cultural and historic properties are located, and through the survey process they can inventory their culturally significant sites. Maintaining their own inventory allows tribes greater control over confidential or culturally sensitive information and its use by those outside of their tribe.

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<sup>92</sup> Marcia Pablo, "Preservation as Perpetuation," *American Indian Quarterly* 25, no. 1 (2001): 19.

Tribes also choose to take on the responsibility of nominating properties to the National Register, and several have done so.<sup>93</sup> Listing properties on the National Register also opens up potential grant funds, in that National Register properties are eligible for certain grants which fund planning as well as “brick and mortar” projects. The National Register listing responsibility also gives tribes greater control over the information they choose to share with the public. By taking on this responsibility, the listing of tribal properties moves from the SHPO to the tribe, and thus the tribe can decide what to nominate to the National Register. As only NPS can list properties on the National Register, tribes have control of the nomination process but NPS governs the actual listing. The ability to oversee the nomination of sites brings tribes greater control over their cultural resources and lets them decide what should be put forward for listing and what sites should be held back from federal review.

Other responsibilities generally assumed by THPOs are the creation of preservation plans, advising and assisting Federal and State agencies and local governments in carrying out preservation responsibilities, and providing public information, education, training, and technical assistance. Generally tribes fulfill the preservation planning responsibility as part of developing their THPO program. Tribes with THPO programs can control future planning efforts rather than leaving that responsibility with the SHPO. THPOs also choose to take on advising and assisting Federal and State agencies and local governments for reasons similar to assuming Section 106 responsibilities. By taking on this responsibility, it gives the THPO a seat at the table, and it also brings THPOs into greater contact with federal, State, and local officials, helping to develop stronger relationships between the tribe

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<sup>93</sup> Paul Lusignan, Historian/National Register Reviewer, interview by Rachel Brown, (January 11, 2012).

and government decision makers. THPOs may also take on public information, education, training, and technical assistance if they have the staffing capacity. Some THPO programs consist of only one staff member, while others, like the Navajo Nation, are large and consist of multiple departments. Although THPOs carry out some public information and educational programming, providing training and technical assistance can be more difficult. As discussed later in the recommendations section, increased federal financial assistance or federal grant opportunities for THPOs would allow tribes to take on multiple responsibilities and carry out more programs that benefit the tribe's cultural preservation program.

The final responsibility assumed by THPOs is cooperation with Federal, State, and local entities to ensure that historic preservation is taken into account at all levels of planning, and the administration of federal assistance programs for historic preservation. A tribe may choose to leave this responsibility to the SHPO if the tribe has a good relationship with the SHPO's staff. Like the responsibilities discussed in the previous paragraph, taking on the responsibility to administer federal assistance programs could be related to the capacity of the tribe to provide staff positions. While many THPOs would like to administer federal programs, a significant bureaucratic burden can accompany the process. The abundance of reporting requirements can overwhelm a small THPO staff that may not have the capacity to meet these requirements and carry out the other THPO responsibilities. Some THPOs find that the majority of their time is spent responding to Section 106 consultation requests and the associated paperwork. Therefore, THPOs may find that while they would like to take on additional responsibilities, but the time needed to complete all the federal

reporting requirements associated with each program can negatively impact other areas of their cultural preservation program.

The two responsibilities that have not been assumed by THPO tribes are certifying historic preservation tax credits and assisting local governments in becoming a Certified Local Government (CLG). The reason for leaving the tax credit responsibilities with the SHPO is that federal tax credits don't apply to tribal properties.<sup>94</sup> Similarly tribes have no interest in taking on the CLG responsibility since the CLG program requires that 10 percent of historic preservation funding goes to support an historic preservation organization. Most tribes do not have the capacity to set up an independent organization responsible for cultural preservation, let alone financially support the organization to the extent required.<sup>95</sup>

Tribes usually have to make some adaptations to the THPO program so that the program is compatible with tribal cultural practices. Some THPO tribes have cultural committees or elders councils that oversee cultural preservation projects. For example, the Mohegan Tribe has a seven-member Council of Elders that is responsible for overseeing the tribe's cultural integrity.<sup>96</sup> These cultural committees and elders councils offer advice to the THPO and oversee preservation projects to ensure they are in line with tribal cultural practices. For instance, the elders council may advise a THPO during the Section 106 process, particularly if the site in question is of traditional cultural significance. Many tribes have also had to adapt decision-making schedules for preservation projects to accommodate THPO consultation with

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<sup>94</sup> James Bird, Tribal Historic Preservation Officer Program, Chief, interview by Rachel Brown, (October 17, 2011).

<sup>95</sup> *ibid*

<sup>96</sup> The Mohegan Tribe, *Mohegan Tribal Council of Elders*, February 3, 2012, <http://www.mohegan.nsn.us/Government/tribalElders.aspx>. Mohegan Tribal Council of Elders.

the cultural committees and/or elders councils. Due to the consensus building tradition of tribal governments, many THPOs do not make decisions with the same speed as SHPOs.<sup>97</sup> Thus, when projects are being developed by federal agencies, the agency should build additional time into project schedules to respect and accommodate the pace of tribal decision-making processes.

For all the benefits associated with becoming a THPO some tribes still choose not to adopt the program. This happens for a variety of reasons, some of which are within the control of the tribe and some which are not. Some tribes choose not to be THPOs because they already have a well-established and active preservation program. For example, the Hopi Tribe established the Hopi Cultural Preservation Office in 1990. The tribe has its own well-funded program and does not seem to want to become part of the THPO program. There does not seem to be any additional advantage to the tribe in becoming a THPO, as they have the means to execute sovereign oversight of their own program. While some tribes are like the Hopi and have the resources to maintain their own programs, others choose not to become THPOs because they do not want to be required to comply with NPS regulations or make an application to the Secretary of the Interior, regarding it as their sovereign right to oversee their own cultural resources. Some may argue that while the THPO program is an agreement between NPS and a tribe, the program is also imposing a federal system of preservation on sovereign tribal practices.<sup>98</sup> Therefore, these tribes either develop their own programs of cultural preservation and/or they rely on good relationships with the SHPOs of the states that surround their reservations.

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<sup>97</sup> James Bird, Tribal Historic Preservation Officer Program, Chief, interview by Rachel Brown, (October 17, 2011).

<sup>98</sup> *ibid*

At the other end of the spectrum, some tribes have extremely small populations or small landholdings, which make it difficult for them to take on THPO responsibilities. For instance, some of the Rancherias in California have landholdings of a couple of hundred acres and populations under 100 people. It is also important to understand that not all tribal members included in the population count live on tribal lands. They may be registered tribal members but live off reservation. Thus, the number of people available to carry out tribal duties may be very small, and therefore, while the tribe may want to take over certain preservation duties, they simply don't have the capacity to do so. Similarly, if a tribe has only a small amount of tribal lands they may determine that it is not worth their time or effort to become or maintain a THPO program. This is not to say that tribes with smaller populations and/or landholdings do not become THPOs. For example, the Kashia Band of Pomo Indians of the Stewarts Point Rancheria, California, has a population of about 78 people and tribal lands equaling about 80 acres, and yet the tribe became a THPO in 2005.<sup>99</sup>

If a smaller tribe is able to invest resources towards developing a THPO office, then the funding associated with being a THPO can greatly assist them in maintaining their preservation program and furthering the tribe's cultural preservation goals.

In the analysis of the THPO program, one of the primary research questions was to determine if there were geographic and chronological trends associated with tribes becoming THPOs. Would THPOs be concentrated mostly in the Southwest and the Pacific Northwest where there is a higher concentration of tribes? Would the

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<sup>99</sup> U.S. Census Bureau, *Profile of General Population and Housing Characteristics: 2010 Demographic Profile Data*, February 6, 2012, [http://factfinder2.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=DEC\\_10\\_DP\\_DPDP1&prodType=table](http://factfinder2.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=DEC_10_DP_DPDP1&prodType=table). ; California Rural Indian Health Board, *Member Tribes*, <http://www.crihb.org/inside-crihb/member-tribes.html>.

oldest THPOs be the larger tribes, like the Navajo? In looking at the data for the THPO program, it becomes apparent that some of these expectations do hold true. There are many THPOs in the Southwest and the Pacific Northwest, but there are also numerous THPOs located in the Great Lakes region and quite a few in New England (Figure 1). Oklahoma has twenty-two federally recognized tribes who have territories within the border of the state, yet there are only seven THPOs in Oklahoma. Because tribes in Oklahoma are unique in that they have only a small percentage of land held in trust by the federal government, it is more complex for them to meet the tribal lands requirement under the THPO regulations. However, it is not impossible as evidenced by tribes like the Choctaw and the Citizen Potawatomi who both have THPOs. Many of the federally recognized tribes that reside in the Southeast region of the United States have also opted to become THPOs.

[Figure 1 Redacted]

**Figure 1: Location of THPO tribes (courtesy of the National Park Service).**

[Figure 2 Redacted]

**Figure 2: Location of THPO tribes and years participating in the program (courtesy of the National Park Service).**

Another trend that presented itself is that the size of a tribe, in terms of population and/or tribal lands, does not necessarily correlate to the length of time that a tribe has been a THPO (Figure 2). The Navajo (population 173,667) were one of the first to become THPOs, but so to were the Eastern Band of Cherokee (population 9,018).<sup>100</sup> It seems more likely that the tribes that have participated the longest in the THPO program were the ones who either had the resources to develop the program initially or the tribes that saw the inherent benefit of gaining the authority associated with becoming a THPO. There could also be a correlation between becoming a THPO and tribes that suffered particular hardship and loss of land because of federal policies. Thus, tribes that were terminated in the 1950s and 1960s choose to become THPOs much more quickly because they saw it as a way to more fully regain and maintain sovereign control over tribal lands. Another interesting trend is the clustering of newer THPOs. Figure 2 illustrates that tribes within relatively close proximity to one another joined the program around the same time. It is possible that as inter-tribal cooperation efforts have grown, tribes have a greater opportunity to see and understand the benefits of the THPO program. It is also likely that as the THPO program has grown and gained greater recognition and authority, more and more tribes are seeing the benefits of becoming a THPO and putting resources towards

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<sup>100</sup> U.S. Census Bureau, *Profile of General Population and Housing Characteristics: 2010 Demographic Profile Data*, February 6, 2012, [http://factfinder2.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=DEC\\_10\\_DP\\_DPDP1&prodType=table](http://factfinder2.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=DEC_10_DP_DPDP1&prodType=table).

developing an agreement with NPS. As this is an internal evaluation of the THPO program it is hard to give an exact explanation. A survey of current THPOs as well as tribes not participating in the program would need to be conducted to get a more complete picture of the full effects and reasoning behind the decision to become a THPO.

### **Funding Analysis**

The THPO program provides funding for all certified THPOs on an annual basis. This funding is non-competitive and is distributed to all THPOs. As mentioned in the beginning of the section, the program is essentially an agreement between NPS and tribes to assume certain preservation responsibilities, and is not necessarily a funding program. The funding provided through the grant program is reliant upon annual appropriations from Congress. However, should Congress not provide an appropriation for the tribal HPF programs, THPOs are still responsible for carrying out the agreed upon preservation responsibilities regardless of funding provided by NPS. The tribal line item within the HPF funds both the Tribal Project Grant program and the THPO program, therefore, the money that is appropriated by Congress must be divided between these programs.

The THPO program typically receives the larger allotment of the HPF funding, some \$1 million to \$4 million annually depending on the overall funding levels for the HPF account. Out of the portion allotted to the THPO program, NPS staff disperses funds evenly between all of the THPOs. A small portion of the allotment is held back each year to cover new THPOs that will come online during

that fiscal year.<sup>101</sup> Additionally, THPOs that are responsible for larger amounts of tribal lands receive funding slightly above the amount disbursed to all THPOs. For example, in 2011 the NPS THPO program received \$7,445,463 from the HPF. Therefore, in 2011 the average funding level for most THPOs was \$50,000-\$104,000, however, the Navajo Nation, which has over 17 million acres and is one of the largest reservations in the continental United States, received close to \$103,354. NPS also withheld \$313,377 from the total amount allotted in order to fund 11 THPOs scheduled to come online throughout 2011.<sup>102</sup>

Since 1996, the average annual funding level for individual THPOs has fluctuated \$50,000-\$150,000. The extreme swing in funding levels can be attributed to the fluctuation in HPF funding provided by Congress. In 2005, the HPF provided a little over \$3 million for both the Tribal Project Grant program and the THPO program. This resulted in a breakout of roughly \$750,000 for Tribal Project Grants and a little over \$2.4 million for the THPO program. As a result, the average disbursement to THPOs was close to \$45,000. However, in 2001, due to efforts to pass the Conservation and Reinvestment Act, the Congress funded Tribal programs at the highest levels ever provided.<sup>103</sup> The tribal account received \$5.3 million, with Tribal Project Grants receiving \$1.2 million and the THPO program receiving \$4.1 million. Because of this substantial increase in funding the average disbursement to

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<sup>101</sup> James Bird, Tribal Historic Preservation Officer Program, Chief, interview by Rachel Brown, (October 17, 2011).

<sup>102</sup> THPO FY11 Apportionment Spreadsheet 2<sup>nd</sup> and Final Apportionment. Cultural Resources National Park Service Tribal Historic Preservation Officer Program, "Derivation of Apportionment FY 2011 P.L.111-322" (2011).

<sup>103</sup> The Conservation and Reinvestment Act (CARA) proposed a dramatic increase appropriations for programs funded through Outer Continental Shelf (OCS) leases. These types of programs include historic preservation and land conservation programs. Historic preservation programs funded through the HPF are not funded through tax dollars. Money collected from oil and natural gas leases associated with drilling on the OCS fund them.

THPOs rose dramatically as well; THPOs received an average of \$156,000 in 2001. The dramatic swings in funding demonstrate the impact of Congressional appropriations on preservation programs (Table 10). THPOs and other preservation programs are reliant on Congress to provide consistent funding levels in order to maintain consistent levels of service for cultural preservation projects.

[Table 10 Redacted]

Table 10: Average Annual THPO Grant Award (courtesy of the National Park Service Tribal Preservation Program).

Another consideration of THPO funding is the rate at which the program has grown over the last sixteen years. The addition of an average of 7 new THPOs a year has steadily decreased the amount of money that each THPO receives. With the exception of 2001, Congress has not significantly increased the funding for tribal programs even though the number of tribes participating has significantly increased. In 1996, the Tribal Project Grant and the THPO programs funded 48 tribal communities to carry out cultural preservation activities. In 2011, 143 tribal communities were funded between these two programs. Despite supporting almost three times as many communities, funding for these programs has barely increased over the last 16 years. For some THPOs the level of funding provided through the HPF is barely enough to pay for one full-time staff position. This places a tremendous workload on these THPO offices, with many struggling just to respond to the growing volume of Section 106 and consultation requests. As funding shrinks, it is more and more difficult for THPO offices to carry out their preservation responsibilities. Yet, tribes have done remarkable things with the limited funding they have received. THPOs have undertaken numerous survey and inventory efforts, created tribal registries, and undertaken countless Section 106 consultations to protect culturally

and historically significant sites. In 2010 alone, over 2,000 new properties were added to tribal registries by THPOs.<sup>104</sup>

There is no doubt that THPOs are significantly contributing to the cultural preservation of their individual tribes. There is also little question that if funding were increased, THPOs would be better able to serve their communities and provide much needed cultural preservation services to their tribal members.

### **Recommendations**

An outstanding issue for the THPO program is limitations on which tribes can participate and which cannot. The fact that most Alaska Native entities and all Native Hawaiian Organizations cannot participate in the program precludes a significant number of tribal communities that are associated with lands in the United States from participating in an important cultural preservation program. Additionally, some American Indian tribes in the continental United States are also excluded because they either do not have land, like Native Hawaiian Organizations, or they have land but it is not held in federal trust, like Alaska Native entities. While tribes are concerned about site-specific preservation, many are also interested in language preservation as well as the preservation of traditional ceremonies, arts and craft skills, and oral history traditions. Many of these aspects of cultural preservation relate to tribal lands, but are not directly tied to retention of the land. Because the THPO is so closely modeled on the SHPO program, it allows little flexibility for tribes who do not have recognized lands, either because they lost their land as a result of termination policies or because Congress has not recognized tribal sovereignty over lands in federal legislation. The THPO program could benefit from Congress re-

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<sup>104</sup> National Park Service Tribal Historic Preservation Office Program, "Tribal Survey FY 2010" (2011).

evaluating the program's authority by moving the THPO program away from the land based/SHPO model. Congress could amend NHPA by stating that the THPO program applies to all Native American Tribes, Native Hawaiian Organizations and Alaska Villages and Alaska Corporations. Because tribes are concerned about broader preservation issues than those associated with specific sites, expanding the THPO program to allow for greater tribal participation would allow the federal government to tailor the program to fit the unique preservation needs of all tribal communities. By opening the THPO program up to landless tribes, Alaska Native communities and Native Hawaiian Organizations, the federal government could allow these tribes to access consistent funding to provide for a cultural preservation officer who could work to ensure the retention of culture among tribes who have lost much of their traditional connections through the expropriation of tribal lands. The THPO program could benefit from a shift in focus to include a greater array of tribes, and thus the federal government could better serve the cultural preservation needs of tribes.

While Congress can do their part to assist tribes in gaining greater access to the THPO program, NPS can also provide some guidance to better define tribal lands, which could open up the program to more tribes in the continental United States. Currently, NPS is operating under an interim rule for the definition of tribal lands. The rule currently applies to lands within the exterior boundaries of an Indian reservation and dependent communities that are held in trust by the federal government for the benefit of the tribe.<sup>105</sup> The THPO program does not allow tribes

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<sup>105</sup> "Dependent community" means any lands set aside for use by Native American tribes under the superintendence of the federal government. This means any lands set aside for a tribal community but not specifically "reserved" as part of a piece of federal legislation, but recognized as tribal lands through other governmental means.

to exert their THPO authority over lands held in individual allotments by tribal members that are outside the boundaries of the original reservations.

Also, THPOs cannot exert their authority on tribal lands that are owned by the tribe but are outside the boundaries of the original reservation and are not yet held in trust by the federal government. This means that if a tribe is actively purchasing lands that were lost during allotment or termination, but those lands have not been taken into trust by the federal government, then the THPO cannot assert authority over the newly acquired land. Once land is purchased, the tribe owns it and can petition the federal government to take the new land into trust. It can take years for the federal government to officially accept the new land into trust. NPS has not been able to clear a final rule on the definition of tribal lands through the Solicitor's Office. Currently, the Solicitor's Office reviews each application to become a THPO on a case-by-case basis to determine if the tribe meets the federal definition of tribal lands. A finalized rule could be a regulatory vehicle for opening up the program or at least allowing current THPOs to exert greater authority over lands controlled and owned by tribes.

Additionally, just as Congress could use its authority to modify the THPO program to apply to both Alaska Native entities and Native Hawaiian Organizations, it could also amend NHPA to allow the THPO program to apply to Indian country rather than applying to tribal lands as the act currently reads. Using the term Indian country would provide some Congressional clarification, and would allow THPOs to exert greater authority over lands controlled by tribal governments.<sup>106</sup> Congressional amendment would be the most direct way to achieve greater authority for the THPO

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<sup>106</sup> "Indian country" means any lands within the exterior boundaries of an Indian reservation, all dependent communities, and all Indian allotments.

program; however, it would not be the most expeditious way to accomplish the expansion of programmatic authority. The legislative process can be long and tedious, and it could be years before Congress takes up NHPA for amendment. When it does, there is no guarantee that an amendment to expand the THPO program would be accepted by both the House and Senate.

As discussed in the recommendations section of the Tribal Project Grant program, the THPO program would also benefit from additional funding. Separating the two HPF funded tribal programs from one another and having each program funded under individual line items would create greater financial stability for both the THPO program and Tribal Project Grants. Splitting the HPF allocation between the two programs means that each year THPOs receive a little bit less in annual disbursements. This is especially true as more and more tribes join the THPO program, but the total amount of money appropriated by Congress has not kept pace with this programmatic increase. If the disbursement amounts to each THPO continue to decrease annually, it is conceivable that tribes could start to question whether participating in the THPO program or becoming a THPO is worth the time and effort. If the disbursement amount is not enough to cover one staff person's salary some tribes might be forced to withdraw from the program because they would no longer be able to maintain a staff member with the professional qualifications required by NPS, and therefore they would not be able to maintain the THPO agreement. If the THPO program continues to add tribes at the current rate, it is likely that the program is not too many years away from having to make some critical decisions about how THPO funds are allocated.

NPS should start now to push for dedicated funding for both the THPO program and the Tribal Project Grant program. This can be done first by including these programs as specific line items in the NPS budget, which the President sends to Congress at the start of the Congressional appropriations process. By including these programs as line items, NPS and the President would signal to Congress that they are important and are seen as a priority. It is much easier to get programs funded with agency backing than by relying on members of Congress to place funding in a bill through the amendment process. Securing annual funding can take several years so the earlier NPS starts to include the line items in their budget the better. Greater funding appropriations can also be supported by increased advocacy efforts. While NPS is barred from advocating for itself, its funding requests can be championed by outside groups such as tribes that are THPOs and the National Association of Tribal Preservation Officers (NATHPO). By developing relationships with members of Congress and the appropriations committee and by garnering the support of congressional delegations for states with THPOs, both NATHPO and individual tribes can work to increase the overall funding for the THPO program. Active engagement through letters of support and meetings with members of Congress and their staff is the key to member education about funding needs. Having members personally interested and invested in the THPO program is essential to gaining an increase in the annual appropriation for the program. An increase in funding tribal preservation programs in general, and for the THPO program specifically, means the NPS can help to support a greater number of tribes as they work to create and sustain cultural preservation programs.

## Chapter 5: Conclusion

This paper has provided a historical overview of the development of both historic preservation policy and Indian Affairs policy over the course of the 20<sup>th</sup> century, a detailed examination of the policy recommendations outlined in the NPS report *Keepers of the Treasures*, and an overview and analysis of two NPS grant programs that directly fund tribal cultural preservation projects.

Chapter 2 considered the tumultuous relationship between Native American tribes and the federal government, and looked at how, in the beginning of the 20<sup>th</sup> century, historic preservation policy and Indian Affairs policy were working as separate policy tracks. Analysis of policy and political movements demonstrated that by the end of the 20<sup>th</sup> century, the two policy arenas had come to overlap and work together to encourage the concept of cultural preservation.

Chapter 3 examined the recommendations made in *Keepers of the Treasures* to determine, twenty-two years later, which recommendations had been met and which still needed to be fulfilled. As the chapter discusses, all of the recommendations have been met, at least in part, through legislative or programmatic vehicles. Through these initiatives the federal government has worked to broaden the spectrum of preservation activities that it supports, and has opened up federal preservation programs to allow for greater tribal participation. While the recommendations have been met at some level, there are certainly areas of federal preservation policy that would benefit from additional work, either through programmatic or legislative means, in order to strengthen federal support for tribal cultural preservation projects. The areas of confidentiality relating to sacred and culturally sensitive information sharing should be further evaluated to determine if agencies should receive FOIA exemptions or if

tribal concerns could be addressed through agency guidance and employee education. Additionally, this chapter considered the need to implement federal policy supporting IP protections for tribal knowledge, and called for the promulgation and finalization of regulations relating to tribal art and craft trademarking. As was discussed, progress has been made in adapting federal preservation policy and programs to better suit the unique needs of Indian tribes, however, work still needs to be done to fully address the goals and vision for federal preservation laid out in *Keepers of the Treasures*.

Lastly, Chapter 4 evaluated the two HPF grant programs that directly fund Native American cultural preservation. It is clear from the analysis that each program, Tribal Project grants and THPO, serves a unique need or provides a specific service. The Tribal Project Grant program funds individual preservation projects undertaken by tribes. While the funding for the program is relatively small and is competitively distributed, it has funded over 550 tribal communities over the last 22 years, and provided funding to Alaska Native communities and Native Hawaiian Organizations, which are precluded from receiving funding through other federal preservation grant programs. The THPO program has served as a way for tribes to formally assert their sovereignty over cultural resources on tribal lands by authorizing these tribes to assume certain federal preservation responsibilities. The program also helps by placing the THPO tribes on equal footing with SHPOs during Section 106 consultations, and provides much needed annual funding to the 131 tribes participating in the program. These programs have contributed greatly to addressing the unique preservation needs of Native American tribes, however, it is also clear that the programs could do more if given the opportunity. The Tribal Project Grant program would benefit from a reevaluation of funding priorities to ensure that the

grant program is providing funding for areas of cultural preservation that are of greatest concern to the tribes. As discussed in the chapter, the THPO program would benefit from the amendment of legislation or a clarification of agency guidance relating to the definition of tribal lands. By changing the definition or requirement of tribal lands the federal government could potentially open the THPO program up to more Native communities, thus allowing these communities to access a wider array of federal financial and technical support for tribal preservation. Additionally, both the Tribal Project Grant program and the THPO program would better serve tribal preservation needs if they were funded through individual HPF allocations rather than the current practice of one HPF lump sum split between the two programs. Both grant programs could also provide expanded assistance through increases in funding allocations, which would allow the programs to provide a greater number of grants and allowing a greater number of tribes to participate.

As NPS nears its centennial, and plans for its next 100 years, it should give consideration to the policy and programmatic recommendations made throughout this paper. In addition to this internal review of grants, NPS should reach out directly to the tribes to learn more about their current cultural preservation priorities. It is essential for NPS to ask tribes participating in grant programs and those that do not participate, to review the programs and share tribal preservation priorities with the Park Service. These priorities and tribal preservation recommendations should serve as the foundation for any programmatic or policy changes NPS undertakes. The Park Service should also consider that there might be a host of reasons why tribes are not participating in the NPS historic preservation grants program. Potentially, tribes may be receiving funding for cultural preservation projects from other federal agencies,

the Smithsonian Institution, private non-profit institutions, or they may utilize tribal funds generated from casino revenues or other funding to support the tribal preservation program. NPS should initiate outreach to tribes to seek out their perspective on the current state of cultural preservation funding in Indian country. While beyond the scope of this report, NPS should work with the tribes to develop reviews of cultural preservation priorities, cultural preservation funding sources, and an evaluation of tribal participation in NPS historic preservation grants. This type of responsive planning would allow the grant programs to anticipate funding needs and make appropriate shifts in funding priorities as necessary. Thus allowing federal historic preservation programs to better respond to the needs of the tribal communities they have been tasked by Congress to serve.

## Appendices

### *The Preservation and Retention of the American Indian Way of Life*

<p>1.)The American people and their government should affirm as a national policy that the historical and cultural foundations of American Indian tribal cultures should be preserved and maintained as a vital part of our community life and development.</p>	
<b>Policy/Program</b>	<b>Relation to Recommendation</b>
National Museum of the American Indian	NMAI is a nationally recognized, congressionally created museum dedicated to the preservation, study and exhibition of the life, languages, literature, history, and arts of Native Americans. Established 1989, through an act of Congress, the museum opened its doors in 2004 becoming the 18 <sup>th</sup> museum of the Smithsonian Institution. <sup>107</sup> Located on the National Mall, near the Capitol building, the placement of NMAI’s Washington, D.C. facility indicates symbolic importance and national dedication to the stated purpose of the museum.
Executive Order 13007, Indian Sacred Sites	EO 13007 was signed by President Clinton on May 24, 1996. In order to reaffirm national commitment to Federal treaties and to protect and preserve Indian religious practices, EO directs all federal agencies with land management responsibility to accommodate access to and ceremonial use of Indian sacred sites by Indian religious practitioners. Additionally, the EO directs federal agencies to avoid adversely affecting the physical integrity of such sacred sites, and where appropriate, agencies shall maintain the confidentiality of sacred sites. <sup>108</sup>

<sup>107</sup> National Museum of the American Indian.  
<http://www.nmai.si.edu/subpage.cfm?subpage=about> 01/11/12

<sup>108</sup> Executive Order 13007: Indian Sacred Sites, May 24, 1996

National American Indian Heritage Month	In 1990 President George H. W. Bush approved a joint Congressional Resolution designating November as National American Indian Heritage Month. The resolution publically acknowledged the unique contributions Native Americans have made to United States. Since 1994, Presidential proclamations have been issued naming November National American Indian Heritage Month. <sup>109</sup> The most recent proclamation, made by President Obama reiterated the national commitment to honoring Native American culture by stating, that during National Native American Heritage Month, we commemorate [the] enduring achievements and reaffirm the vital role American Indians and Alaska Natives play in enriching the character of our Nation.” <sup>110</sup>
Agency training programs in Indian law	Throughout the 1990s many federal agencies implemented staff training programs in Indian law. One such program is the Foundations of Indian Law and Policy workshop designed by the National Park Service. The NPS training gives staff members a basic overview of the sovereign status of tribes, trust responsibility and the government –to-government relationship that is required when interacting with Native American tribes. The course is intended to give NPS managers and staff a better understanding of the unique relationship that exists between the federal government and the tribes and the responsibilities conferred by that relationship. Since 1997 the training course has been offered more than 25 times and trained over 750 people. <sup>111</sup> NPS intends to offer a follow up course entitled Foundations of Indian Law II, which will build off the first course and focus more specifically on treaty rights, sacred sites, and a continued discussion of trust responsibility.

<sup>109</sup> National Native American Month. <http://nativeamericanheritagemonth.gov/about/01/11/12>

<sup>110</sup> White House Office of Press Secretary, *Presidential Proclamation -- National Native American Heritage Month, 2011* (Washington, DC, 2011).

<sup>111</sup> Foundations of Indian Law and Policy Workshop. National Park Service, American Indian Liaison Office, *Foundations of Indian Law and Policy Workshop*, <http://inside.nps.gov/index.cfm?handler=viewnpsnewsarticle&type=Conferences&id=1935> (accessed January 11, 2012).

2.) The national American Indian cultural heritage policy should recognize that the programs to preserve the cultural heritage of Indian tribes differ in character from other American preservation programs.	
<b>Policy/Program</b>	<b>Relation to Recommendation</b>
National Register Bulletin Guidelines for Evaluating and Documenting Traditional Cultural Properties	Originally published in 1990 (revised in 1992; 1998), the bulletin defined a Traditional Cultural Property (TCP) as one that is eligible for inclusion in the National Register because of its association with cultural practices or beliefs of a living community that (a) are rooted in the community's history and (b) are important in maintaining the continuing identity of the community. <sup>112</sup> The bulletin also offers a step-by-step guide on how to determine eligibility and how to adapt the National Register criterion to fit both tangible and intangible aspects of a TCP.
National Park Service Tribal Project Grants	The Tribal Project Grants were created in 1990 and funded through the Historic Preservation Fund. The grant is open only to federally recognized tribes, Native Hawaiian Organizations, and Alaska Native groups. The grant programs fund projects in the following categories: locating and identifying cultural resources, preserving a historic property listed on the National Register, preservation planning, oral history and documenting cultural traditions, and education and training projects in historic and cultural preservation.
1992 Amendments to the National Historic Preservation Act and THPO Program	The 1992 Amendments to the National Historic Preservation Act is the foundation of the tribal consultation requirement in the section 106 process. The amendments also clarify that properties of religious and cultural importance to Indian tribes may be eligible for the National Register. <sup>113</sup> Additionally, the amendments authorize the creation of the Tribal Historic Preservation Office program, which allows federally recognized tribes to take on one or more formal preservation responsibilities on tribal lands. <sup>114</sup>

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<sup>113</sup> Advisory Council on Historic Preservation, *Consulting with Indian Tribes in the Section 106 Review Process*, <http://www.achp.gov/regs-tribes.html> (accessed January 19, 2012).

<sup>114</sup> Advisory Council on Historic Preservation, *Tribal Historic Preservation Officers*, <http://www.achp.gov/thpo.html> (accessed January 19, 2012).

3.) Federal policy should encourage agencies that provide grants for museums, historic preservation, arts, humanities, education, and research projects to give reasonable priority to proposals for projects carried out by or in cooperation with Indian tribes.	
<b>Policy/Program</b>	<b>Relation to Recommendation</b>
National Park Service Tribal Project Grants	First funded in 1990, the grant provides federally recognized tribes, Native Hawaiian Organizations, and Alaska Native groups with funds for preservation projects relating to locating and identifying cultural resources, preserving a historic property listed on the National Register, preservation planning, oral history and documenting cultural traditions, and education and training projects in historic and cultural preservation. The Tribal Project Grant program is funded through the Historic Preservation Fund and is a competitive grant.
Tribal Historic Preservation Offices Grant Program (THPO)	Authorized in the 1992 NHPA amendments, and first funded in 1996, the grant provides federally recognized tribes, who have formally accepted one or more preservation responsibilities from the federal government, with funding for preservation activities on tribal lands. The THPO program is funded through the Historic Preservation Fund and is a non-competitive grant.

4.) Federal policy should require Federal agencies, and encourage State and local governments, to ensure that Indian tribes are involved to the maximum extent feasible in decisions that affect properties of cultural importance.	
<b>Policy/Program</b>	<b>Relation to Recommendation</b>
Native American Grave Protection and Repatriation Act (NAGPRA)	Passed in 1990, the act contains a provision requiring federal land managers to engage in consultation with potentially affected lineal descendants, Indian tribes, and Native Hawaiian organizations prior to intentional excavations and immediately following inadvertent discoveries of cultural items on federal or tribal lands. <sup>115</sup>
National Historic Preservation Act (NHPA) 1992 amendments	The 1992 amendments strengthened the role of Indian tribes in the Section 106 process by authorizing tribes to assume 106 responsibilities through the THPO program. Additionally, the federal regulations implementing 106 contain provisions for involving Indian tribes when actions occur on tribal lands and enhanced consultation with Indian tribes and Native Hawaiian organizations throughout the 106 process.
Executive Order 13175- Consultation and Coordination with Indian Tribes	Signed in 2000, E.O. 13175 mandates “early consultation” in the process of developing or prior to implementing proposed regulations with tribal implications. Federal agencies are tasked with providing to the Office of Management and Budget a “statement of the extent to which the concerns of tribal officials have been met.” <sup>116</sup>
Executive Order 13287 – Preserve America	Signed in 2003, the order encourages agencies to, “encourages agencies to seek partnerships with tribal governments and others to make more efficient and informed use of their resources for economic development and other recognized public benefits”. <sup>117</sup>
Obama Executive Memo on consultation	On November 5, 2009 President Obama issued an executive memo directing all agencies to execute a consultation policy as outlined in Executive Order 13175.
Department of Interior Consultation Policy	Signed on December 1, 2011, the DOI Consultation policy outlines procedures for government-to-government consultation with Native American Tribes. The policy instructs all Bureaus within DOI to create and implement their own consultation based on the overarching DOI policy.

<sup>115</sup> "Native American Graves Protection and Repatriation Act," 25 U.S.C. § 3002(c)(2).

<sup>116</sup> "Exec. Order No. 13175, § 3(a), 65 Fed Reg. 67249 " (November 6, 2000).

<sup>117</sup> Advisory Council on Historic Preservation, "Action Plan on ACHP Native American Initiatives," Advisory Council on Historic Preservation (Washington, DC 2003), 5.

<p>5.) Federal policy should encourage State and local governments to enact laws or ordinances providing for the identification and protection of properties of significance to Indian tribes in order to protect such properties from the effects of land use and development and from looting and vandalism.</p>	
<p><b>Policy/Program</b></p>	<p><b>Relation to Recommendation</b></p>
<p>Project Archaeology</p>	<p>Project Archaeology is a national heritage education program founded by the U.S. Bureau of Land Management (BLM). Project Archaeology operates under a partnership between BLM and Montana State University in Bozeman. The program began in Utah in 1990 as a statewide project to combat the vandalism and looting of archaeological sites and has since expanded to 29 states and is currently developing in 10 more. The program works to educate students about our nation’s diverse and fragile archeological sites, and to instill in them a sense of personal responsibility and stewardship towards these sites.</p>

6.) Federal policy should encourage the accurate representation of the cultural values, languages, and histories of Indian tribes in the public schools and in other educational and interpretive programs.	
<b>Policy/Program</b>	<b>Relation to Recommendation</b>
National Museum of the American Indian	Opened in 2004, the museum defines its self as the first national museum “dedicated to the preservation, study, and exhibition of the life, languages, literature, history, and arts of Native Americans...[working] in collaboration with the Native peoples of the Western Hemisphere to protect and foster their cultures by reaffirming traditions and beliefs, encouraging contemporary artistic expression, and empowering the Indian voice.” <sup>118</sup>
National Park Service Teaching with Historic Places (TWHP)	A NPS program that uses places listed on the National Register to help teach history, civics, geography, social studies and other subjects. TWHP has American Indian History as one of the themes of its lesson plans. Within the theme are nine different lesson plans focused on different American Indian historical sites. When possible the lesson plans are developed in collaboration with the tribe or tribes affiliated with the National Register site.
Tribal Project Grants	Under this program, grants can be given for oral history and documenting cultural tradition project. In 2001 a grant was given to University of Hawaii – Center for Hawaiian Studies to videotape Hawaiian kupuna (Elders) who are fishermen, caretakers of fishponds, farmers and/or Elders knowledgeable of the rich history of their place of birth or residence. Footage and transcripts from 14 interviews will serve as a foundation for curriculum and course development for educational resource management tracks that are planned at the Center for Hawaiian Studies. <sup>119</sup>

<sup>118</sup> *About the National Museum of the American Indian*, <http://www.nmai.si.edu/subpage.cfm?subpage=about> (accessed January 19, 2012).

<sup>119</sup> National Park Service, *Fiscal Year 2001 Historic Preservation Fund Grants to Indian Tribes and Alaska Natives and Native Hawaiian Organizations.*, (Washington, DC: National Park Service Tribal Project Grant Program, 2001).

*Preserving American Indian Languages*

<p>7.) Federal policy should recognize the central importance of language in maintaining the integrity of Indian tribal traditions and the tribal sense of identity and well-being. National efforts to assist tribes to preserve and use their native languages and oral traditions should be established in conjunction with the amendment of the National Historic Preservation Act recommended below</p>	
<p><b>Policy/Program</b></p>	<p><b>Relation to Recommendation</b></p>
<p>Native American Language Act of 1990</p>	<p>The act finds that, “the traditional languages of Native Americans are an integral part of their cultures and identities and form the basic medium for the transmission, and thus survival, of Native American cultures, literatures, histories, religions, political institutions, and values; and affirms that “it is United States policy to preserve, protect, and promote the rights and freedom of Native Americans to use, practice, and develop Native American languages”.<sup>120</sup></p>
<p>Native American Language Act of 1992</p>	<p>The act authorized grant programs for tribes and other Native American organizations to support activities aimed at ensuring the survival and continued vitality of Native American languages.<sup>121</sup></p>
<p>Bilingual Education Act</p>	<p>In 1994, Title VII of the Improving America’s Schools Act reauthorized the act. Provisions of the act recognize the special situation of endangered Native American languages and give wide latitude to schools and tribal organizations in planning and carrying out bilingual education programs funded under the Act. It also authorizes priority consideration for development and production of high-quality instructional materials for Native American students.<sup>122</sup></p>

<sup>120</sup> "Native American Language Act of 1990 P.L.101-447 US Statutes at Large" (1990).

<sup>121</sup> William Demment and Robert Arnold, "Stablizing Indigenous Language Section II Language Policy," <http://www2.nau.edu/~jar/SIL/Policy.pdf> (accessed January 20, 2012).

<sup>122</sup> *ibid*

<p>United Nations Declaration of the Rights of Indigenous Peoples</p>	<p>In 2010, President Obama announced support for the Declaration, which states, “Indigenous peoples have the right to revitalize, use, develop and transmit to future generations their histories, languages, oral traditions, philosophies, writing systems and literatures, and to designate and retain their own names for communities, places and persons. . . . States shall take effective measures whenever any right of indigenous peoples may be threatened to ensure this right is protected and also to ensure that they can understand and be understood in political, legal and administrative proceedings, where necessary through the provision of interpretation or by other appropriate means.”<sup>123</sup></p>
<p>Administration for Native Americans (ANA) Language Funding</p>	<p>The Native American Language Act of 1992 authorized the grant program. ANA provides project funding for the purposes of assisting Native Americans to assure the survival and continuity of native languages.<sup>124</sup></p>
<p>NPS Tribal Project Grants</p>	<p>Since 1990, the grant program has consistently funded projects that assist tribes with oral history project, documenting cultural practices in native languages, and training for tribal members in documenting and recording native languages.</p>

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<sup>123</sup> *ibid* 40

<sup>124</sup> Administration for Native Americans, *Program Information*, [http://www.acf.hhs.gov/programs/ana/programs/program\\_information.html#grantareas](http://www.acf.hhs.gov/programs/ana/programs/program_information.html#grantareas). (accessed January 20, 2012).

*Participating in National Historic Preservation Program*

8.) Part of developing a consistent American Indian cultural heritage policy, a national approach should be developed regarding the exhumation, retention, display, study, repatriation, and appropriate cultural treatment of human remains, funerary artifacts, and sacred artifacts.	
<b>Policy/Program</b>	<b>Relation to Recommendation</b>
Native American Graves Protection and Repatriation Act	Passed in 1990, the act sets up a process by which all federal agencies and museums that receive federal funds must inventory their collections for any human remains, burial artifacts, sacred objects, and objects of cultural patrimony associated with American Indian tribes, Alaska Native groups and Native Hawaiian organizations, and if requested must repatriated these remains and objects to lineal decedents, Indian tribes, Alaska Native Villages and Corporations, and Native Hawaiian organizations. The Act also requires consultation with potentially affected lineal descendants, Indian tribes, and Native Hawaiian organizations prior to intentional excavations and immediately following inadvertent discoveries of cultural items on federal or tribal lands. <sup>125</sup>
Federal Agency Repatriation	Federal agencies report repatriating 67% of NAGPRA items (human remains, funerary objects, and sacred artifacts) held in their inventories as of 2009. <sup>126</sup>
Land Management Agencies Reburial Policy	As of 2008, the Bureau of Land Management, Corps of Engineers, Forest Service, Fish and Wildlife, and National Park Service all have policies in place that allow for reburials. The Bureau of Reclamation (BOR) does not allow for reburial on BOR lands. The Tennessee Valley Authority (TVA) does not have a policy in place, but TVA has entered into discussions with tribes on this issue. <sup>127</sup>

<sup>125</sup> Lauryne Wright, "Cultural Resource Preservation Law: The Enhanced Focus on American Indians," *The Air Force Law Review* 54 AF (2004): 135

<sup>126</sup> Government Accountability Office, *NATIVE AMERICAN GRAVES PROTECTION AND REPATRIATION ACT After Almost 20 Years, Key Federal Agencies Still Have Not Fully Complied with the Act*, Government Accountability Office (Washington, DC: Government Printing Office, 2010).45

<sup>127</sup> Ibid P. 50

9.) Tribal needs for confidentiality of certain kinds of information should be respected.	
Policy/Program	Relation to Recommendation
1992 amendments to the National Historic Preservation Act	Section 304 of NHPA was amended to allow federal agencies to withhold information about the location, character, or ownership of a historic resource if it is determined that disclosure of the information may impede the use of a traditional religious site by practitioners. <sup>128</sup> Prior to the 1992 amendments agencies could withhold information if disclosure was determined to cause a significant invasion of privacy and/or risk harm to the historic resource. Section 304 also gives agencies authority to determine who may have access to withheld information. <sup>129</sup>
Tribal Historic Preservation Officers Program	Through the THPO program, many tribes take on the responsibility of nominating sites to the National Register and section 106 responsibilities as well. Some tribes have chosen to develop their own tribal registers of historic and cultural resources, which allows the tribes to maintain confidential records of culturally important sites, and only disclose certain information as needed during the 106 process. The tribal registers are not subject to Freedom of Information Act requests; as the National Register is. <sup>130</sup>
Food, Conservation, and Energy Act of 2008 (2008 Farm Bill)	The 2008 Farm Bill contains a provision for nondisclosure by the Forest Service of the location of Native American reburials on Forest Service land. Additionally, the Forest Service can not disclose the locations of cultural resources, sacred sites, and/or cultural items and their use as related traditional and cultural purposes when information is provided to the agency by tribes under the expectation that the information will be kept confidential. The provision also grants the Forest Service an exemption from the Freedom of Information Act for this type of confidential information. <sup>131</sup>

<sup>128</sup> "Confidentiality of the Locations of Sensitive Historic Resources," *National Historic Preservation Act Section 304*, 16 U.S.C, 470w-3(a).

<sup>129</sup> Paul Lusignan, interview by Rachel Brown, , *Historian/National Register Reviewer*, (January 11, 2012).

<sup>130</sup> *ibid*

<sup>131</sup> "Cultural and Heritage Cooperation Authority Title VIII, Forestry, Subtitle B § 8106," *2008 Farm Bill P.L. 110-246*.

*Tribal Participation in Preservation Disciplines*

10.) Federal policy should provide for the appropriate involvement of Indian tribes in Federally-assisted preservation research on tribal lands and on ancestral lands off reservation.	
<b>Policy/Program</b>	<b>Relation to Recommendation</b>
National Park Service Tribal Project Grants	Since 1990, the Tribal Project Grant program has provided funding for locating and identifying cultural resources, preserving a historic property listed on the National Register, and education and training projects in historic and cultural preservation. The grant program has also funded projects where the tribes are documenting specific resources – eg. 1996 the Confederated Tribes of Warm Springs received a grant to “locate and identify known Petroglyphs and Pictographs within the Confederated Tribes of Warm Springs Reservation, and its ceded area. Record and enhance photographs of petroglyphs to establish a digital repository at the Museum at Warm Springs.” <sup>132</sup>
Tribal Historic Preservation Offices Program	THPO program allows tribes, who have entered into agreements with the Secretary of the Interior to take on one or more federal preservation responsibilities and have certified that they have the ability to access technical advice on preservation issues, to enter into agreements with a federal agency to conduct cultural resource surveys on tribal lands and issue reports for the 106 process.

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<sup>132</sup> National Park Service, *Report on Fiscal Year 1996 Historic Preservation Fund Grants to Indian Tribes, and Alaska Natives*, (Washington, DC: Tribal Project Grant Program, 1996).

<p>11.) Toward the achievement of tribal participation in preservation activities, it may be desirable to consider chartering the establishment of a national private organization to promote and assist in preservation of the cultural heritage of Indian tribes.</p>	
<p><b>Policy/Program</b></p>	<p><b>Relation to Recommendation</b></p>
<p>Keepers of the Treasures</p>	<p>The organization was incorporated in 1992, as a national Native American preservation organization with regional chapters. National Park Service funded the Keepers of the Treasures, in part, from 1993-1997. The organization is no longer active.</p>
<p>National Association of Tribal Historic Preservation Officers (NATHPO)</p>	<p>The organization was founded in 1998, and is a national non-profit organization of tribal government officials involved in preservation work. NATHPO's overarching purpose is to support the preservation, maintenance and revitalization of the culture and traditions of Native peoples of the United States.<sup>133</sup> NATHPO received partial funding from the THPO grant program in 1998, 2000, and 2001.</p>

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<sup>133</sup> National Association of Tribal Historic Preservation Officers, *About NATHPO*, <http://www.nathpo.org/aboutnathpo.htm> (accessed January 20, 2012).

12.) National programs for training of tribal members in preservation-related disciplines should be developed.	
<b>Policy/Program</b>	<b>Relation to Recommendation</b>
National Park Service Oral History Training	From 1993 – 1999 NPS conducted oral history workshops for Native American tribes. NPS would send out teams of historians, anthropologists, photographers, and videographers to train tribal members in documentation techniques.
National Center for Preservation Technology and Training (NCPTT)	In 1996, NCPTT offered training in preservation techniques to the first class of Tribal Historic Preservation Officers. The training session also included a discussion with the new officers to hear feed back about additional trainings that were desired.
Tribal Project Grants	Since 1990, the grant program has provided funds to tribes for education and training projects in historic and cultural preservation. Eg. – A 1994 Tribal Project Grant to Navajo to recruit American Indian college students for professional careers in anthropology and archeology; A 1997 Tribal Project Grant to the Poarch Band of Creek Indians for a comprehensive training in preservation law and techniques.
Advisory Council on Historic Preservation (ACHP)	In 1998, ACHP established the Native American program within the Council. In 2000, ACHP issued a policy statement entitled, “ <i>Policy Statement Regarding the Council’s Relationships with Indian Tribes</i> ”, in which ACHP committed offering Section 106 and other preservation related training opportunities to tribes. In 2003, ACHP committed to offering a minimum twice a year section 106 training to tribes.

*Establishing and Developing Tribal Preservation Programs*

<p>13.) The National Historic Preservation Act, as amended, (16 U.S.C.470) should be amended to establish a separate title authorizing programs, policies and procedures for tribal heritage preservation and for financial support as part of the annual appropriations process.</p>	
<p><b>Policy/Program</b></p>	<p><b>Relation to Recommendation</b></p>
<p>1992 Amendments to the National Historic Preservation Act</p>	<p>The 1992 Amendments to the National Historic Preservation Act created additional access to preservation protections, funding and technical assistance to Native American tribes. The also amendments also clarify that properties of religious and cultural importance to Indian tribes may be eligible for the National Register.<sup>134</sup> Additionally, the amendments authorize the creation of the Tribal Historic Preservation Office program.<sup>135</sup></p>
<p>Tribal Historic Preservation Office Program</p>	<p>Authorized in the 1992 NHPA amendments, but first funded in 1996, the grant provides federally recognized tribes, who have formally accepted one or more preservation responsibilities from the federal government, with annual funding for preservation activities on tribal lands. The THPO program is funded through the Historic Preservation Fund and is a non-competitive grant.</p>

<sup>134</sup> Advisory Council on Historic Preservation, *Consulting with Indian Tribes in the Section 106 Review Process*, <http://www.achp.gov/regs-tribes.html> (accessed January 19, 2012).

<sup>135</sup> Advisory Council on Historic Preservation, *Tribal Historic Preservation Officers*, <http://www.achp.gov/thpo.html> (accessed January 19, 2012).

## Glossary

AIRFA	American Indian Religious Freedom Act
ARPA	Archeological Resources Protection Act
BIA	Bureau of Indian Affairs
CLG	Certified Local Government
DOI	Department of the Interior
FOIA	Freedom of Information Act
HPF	Historic Preservation Fund
IP	Intellectual Property
IRA	Indian Reorganization Act of 1934
NAGPRA	Native American Graves Protection and Repatriation Act
NATHPO	National Association of Tribal Historic Preservation Officers
NEPA	National Environmental Policy Act of 1969
NHPA	National Historic Preservation Act of 1966
NCPTT	National Center for Preservation Technology and Training
NPS	National Park Service
SHPO	State Historic Preservation Office(er)
THPO	Tribal Historic Preservation Office(er)
TWHP	National Park Service Teaching with Historic Places
UNESCO	United Nations Educational, Scientific, and Cultural Organization

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