

“NOTIFICATION IS NOT CONSULTATION”

Ethical Practices in Community
and Indigenous Archaeology



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Archaeologist

An Example

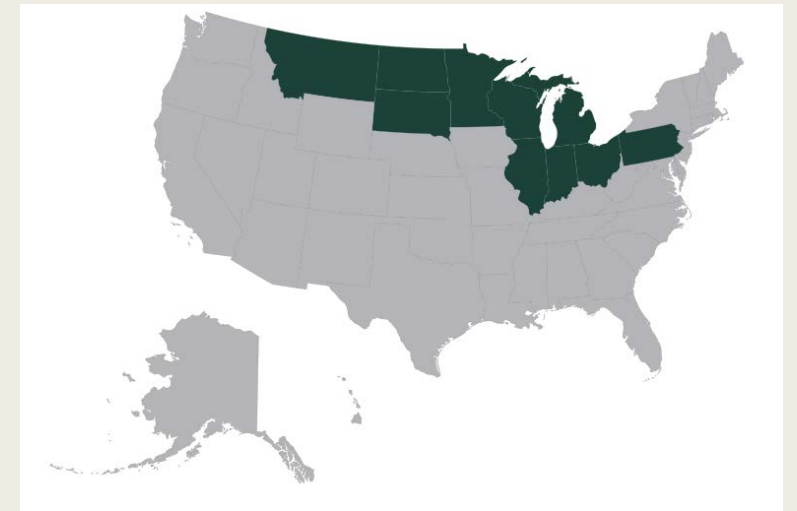
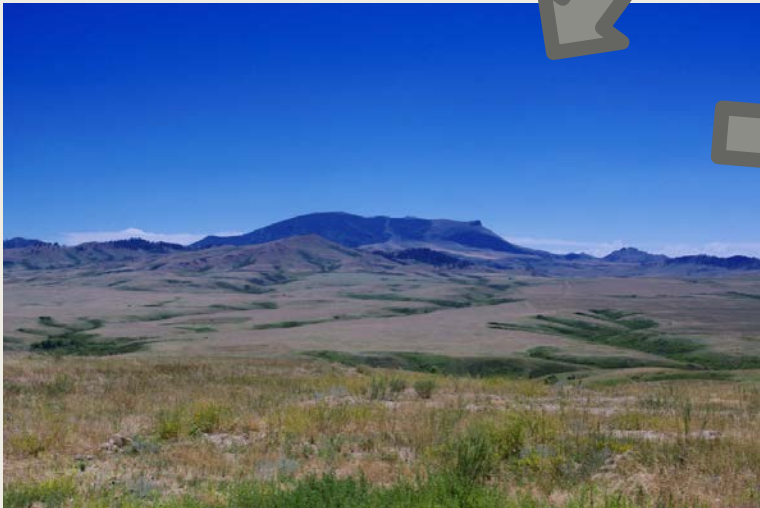
THPO:

Tribal
Historic
Preservation
Office

Reservation lands located in rural
central northern Montana



Chippewa (Ojibwe) + Cree (Nei-yahw)



Ten states within Ancestral Homeland

Who is “Doing Archaeology” in the U.S.?

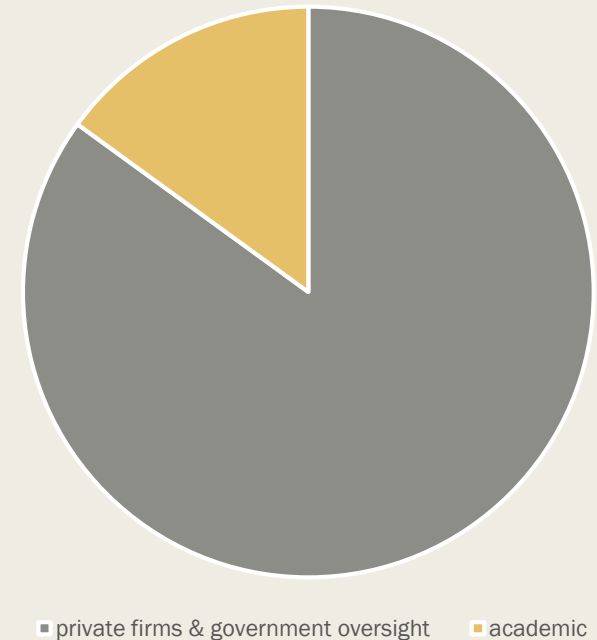
Four sectors (Neumann & Sanford 2010)

- **Academic:** students and faculty “trained to do the training”
- **Private:** standalone archaeology firms and divisions within engineering/architecture firms
- **Government/Public:** regulatory entities
- **Historic Preservation/Environmental Compliance:** concerned about statutory obligations for having archaeological work done

Total Archaeologists employed in Archaeology in 2008: $\geq 8,683$

Private	63%
Public	22.5%
Academic	14.5%

Employed Archaeologists in the U.S.



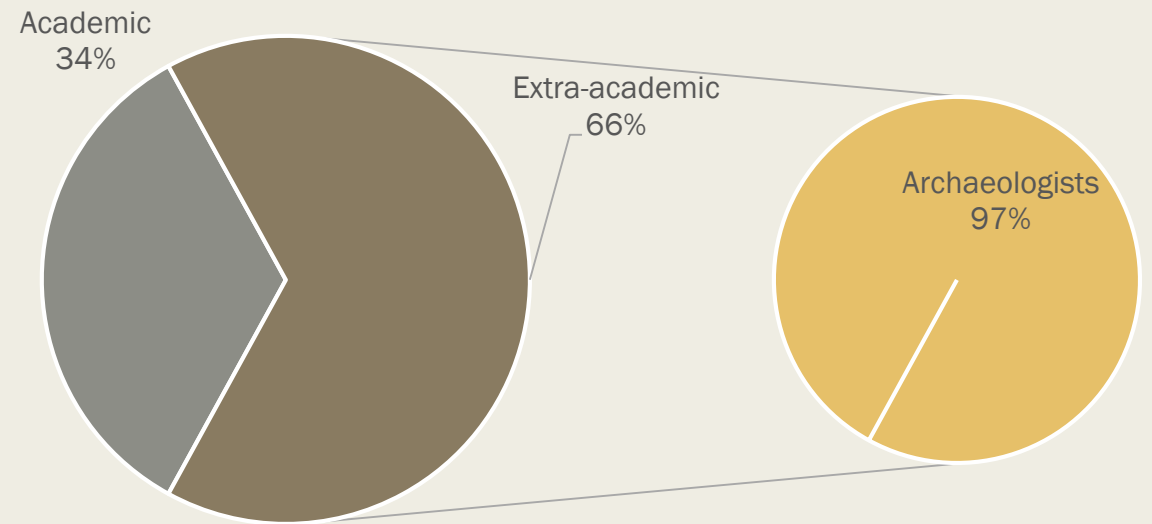
Why is archaeology practiced primarily in an extra-academic setting?

This shift of the field from academic to extra-academic “catches many by surprise, including anthropology faculty.”

- National Historic Preservation Act (NHPA) 1966
 - *Section 106 (or Title 54 signed into effect December 2014)*

36 CFR PART 800:
PROTECTION OF HISTORIC
PROPERTIES

Anthropologists Employed in the U.S.



NHPA Section 106: 36 CFR Part 800

800.1 Purposes (a)

“Requires Federal agencies to take into account the effects of their undertakings on historic properties and afford the Council a reasonable opportunity to comment on such undertakings.”

Unpacking the implications of NHPA Section 106 36 CFR Part 800

- **Federal agencies:** entities that are entirely funded/administered by the federal government (this should include any federal grant money received)
- **Effects:** visual and physical, to any cultural resources or historic properties and their associated APEs (areas of potential effects) as determined by the tower height or other physical characteristics of the project
- **Historic Properties:** “The National Register of Historic Places is the official list of the Nation's historic places worthy of preservation.” (NRHP website) The term however, includes, but is not exclusively limited to, NRHP properties.

NRHP Criteria for Evaluation of Historic Properties

The quality of significance in American history, architecture, archeology, engineering, and culture is present in districts, sites, buildings, structures, and objects that possess integrity of location, design, setting, materials, workmanship, feeling, and association, and:

- A. That are associated with events that have made a significant contribution to the broad patterns of our history; or
- B. That are associated with the lives of significant persons in our past; or
- C. That embody the distinctive characteristics of a type, period, or method of construction, or that represent the work of a master, or that possess high artistic values, or that represent a significant and distinguishable entity whose components may lack individual distinction; or
- D. That have yielded or may be likely to yield, information important in history or prehistory.

These terms present red flags for tribal heritage preservation, as they tend not to apply and are exclusive.

Diversity Deficit In The NRHP

(Vincent Michael, NATHPO 2015) as the 50th anniversary approaches (2016) discussed negative NRHP issues including:

- "Too many white guys"
- Focus on architecture
- Architecture nomination also limited by "integrity" & period of significance

NRHP in contrast to the World Heritage program, has weak spot - addressing intangible heritage.

“The cultural heritage approach to conservation should be culturally relative, based on interrogation of the root values of each culture.”

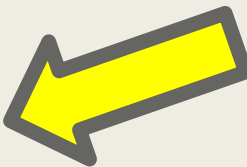


vs.



Unpacking the implications of NHPA Section 106 36 CFR Part 800

- Federal agencies: entities that are entirely funded/administered by the federal government
- Effects: visual and physical, to any cultural resources or historic properties and their associated APEs (areas of potential effects) as determined by the tower height or other physical characteristics of the project
- Historic Properties: “The National Register of Historic Places is the official list of the Nation's historic places worthy of preservation.” (NRHP website)
- “a reasonable opportunity to comment* on such undertakings”: as outlined in the pertinent Programmatic Agreement, Memoranda of Agreement/Understanding

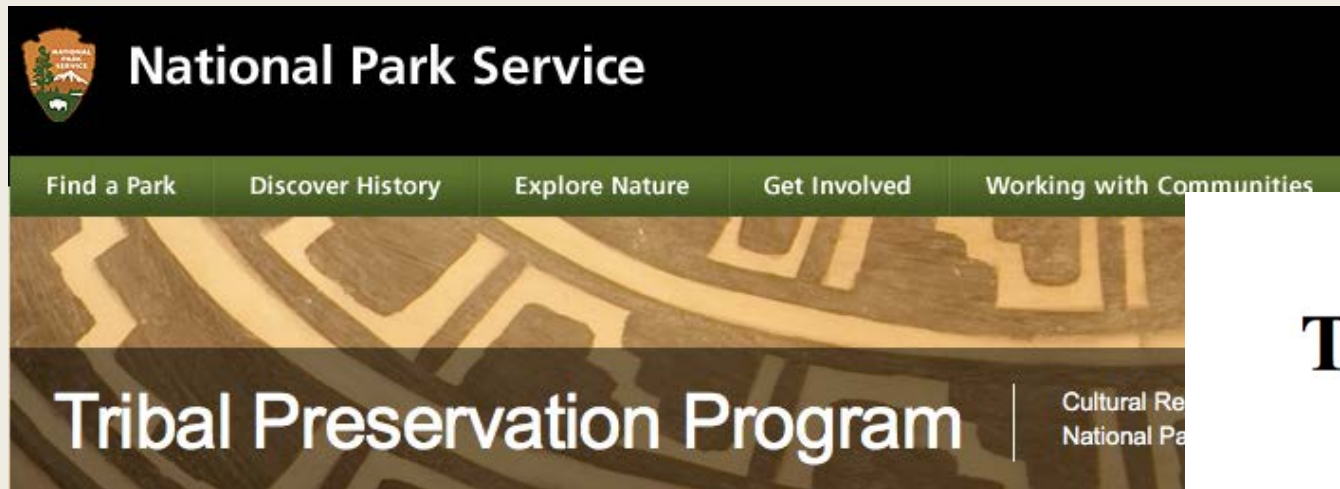


“a reasonable opportunity to comment on such undertakings”

- Standard for “a reasonable opportunity” generally equates to 30 days
- *Drastically affected by communication method: snail mail is most common and not adequate*
- *Lack of current and accurate contact information for THPOs online: who should you be talking to?*



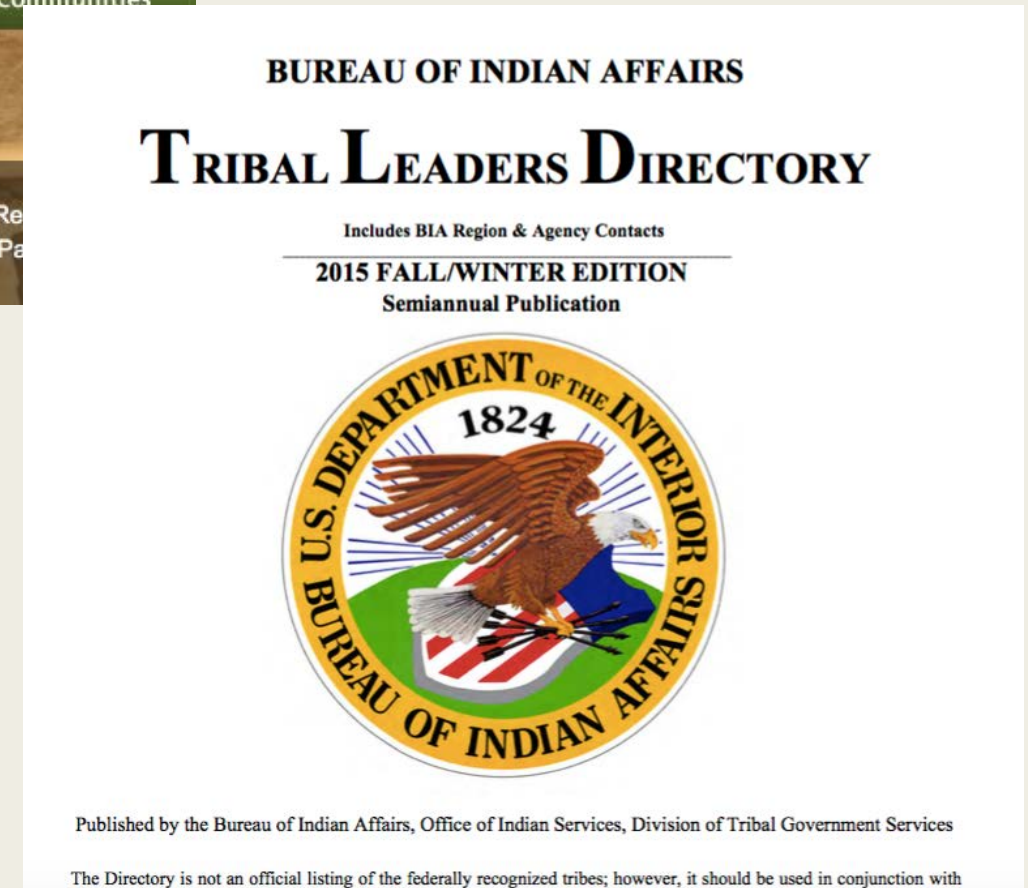
IMPORTANT: The clock should start with acknowledgement of receipt so that both parties know review has begun. It's not a cooperative process if half of those involved are unaware the conversation is happening.

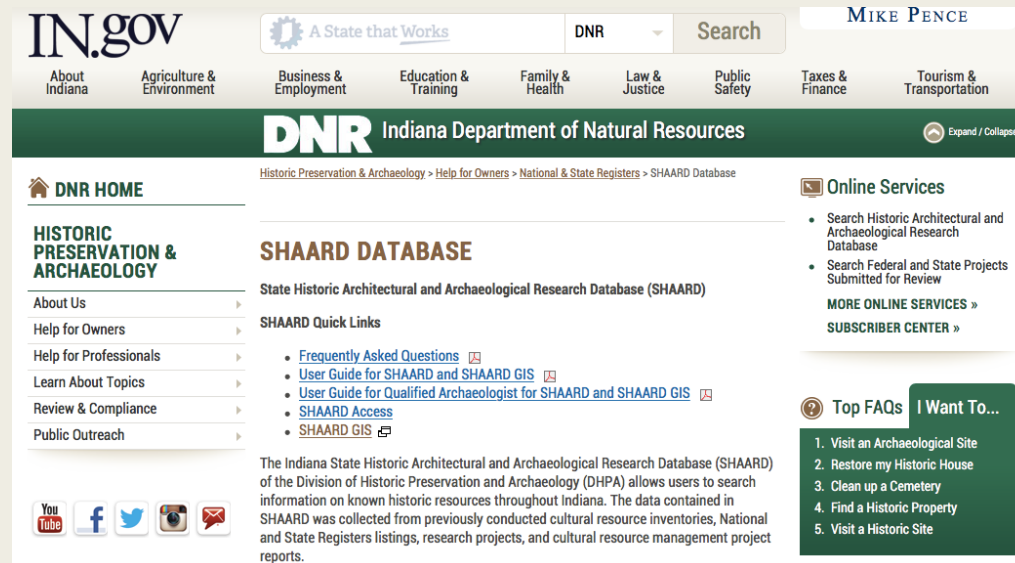
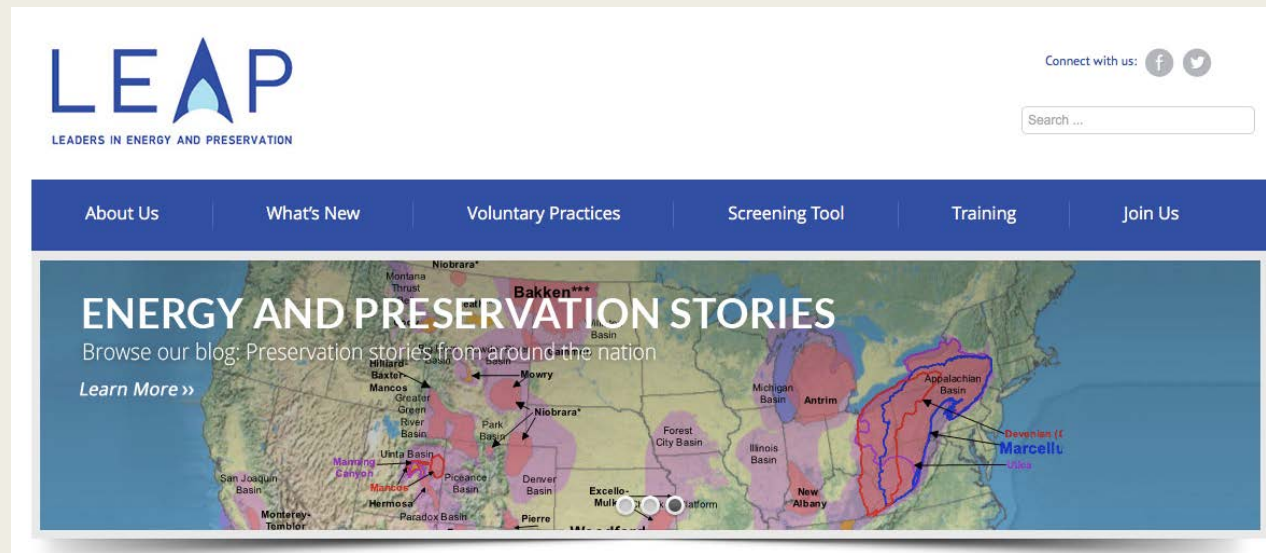


Notification can also be difficult to initiate, creating the first barrier

The NPS and the BIA both provide directories online, but:

- These are out of date due to high turn over in tribal offices and a lack of option for self-identification (relies on data collection from federal office)
- No spatial information regarding area of interest is included, only state in which THPO office is located





Databases exist, containing large sets of cultural resource information, but remain largely out of reach due to the presence of sensitive information (such as ownership or exact spatial locations) or because they are proprietary. Tribes generally do not (and should not have to) disclose the location or existence of sacred sites.

Digital Index of North American Archaeology (DINAA)

The Digital Index of North American Archaeology (DINAA) is a multi-institutional undertaking to create interoperability models for archaeological site databases in the eastern United States. The 2-year project, which is funded by the National Science Foundation, commenced September 1, 2012. [View the technical proposal.](#)



This page provides ongoing information about the project. Links below to learn more about this project. We encourage community via the NASA (National Association of Archaeologists) comments, and other participation in this project by emailing project PIs David Anderson and Josh

While operational at this phase, DINAA continues to grow and will need help from archaeologists all over the continent to expand.

DINAA provides linked open-data browsing across multiple states, pulling from SHPO, museum, and tribal data.

OPEN CONTEXT About Explore Contact Donate

Search

Search within these items...

Applied Filters

Context

United States

Filtering Options

United States

Illinois	59,435
Georgia	53,349
Virginia	42,613
Indiana	41,553
Florida	33,105
Missouri	32,681
South Carolina	28,307
Alabama	27,648
Iowa	26,933
Louisiana	19,091



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DA 13-1985

September 27, 2013

**CGB's OFFICE OF NATIVE AFFAIRS AND POLICY AND WTB RELEASE SCOPING
DOCUMENT TO INITIATE TRIBAL CONSULTATION ON A PROPOSED PROGRAM
COMMENT TO GOVERN REVIEW OF POSITIVE TRAIN CONTROL FACILITIES UNDER
SECTION 106 OF THE NATIONAL HISTORIC PRESERVATION ACT**

WT Docket No. 13-240

By this Public Notice, the Consumer and Governmental Affairs Bureau's (CGB) Office of Native Affairs and Policy (ONAP) and the Wireless Telecommunications Bureau (WTB) initiate and invite government-to-government consultation with and input from federally recognized Tribal Nations, their Tribal Historic Preservation Officers (THPOs), and other Tribal cultural preservation officials regarding the development of a proposed Program Comment to govern review of positive train control (PTC) wayside facilities construction under Section 106 of the National Historic Preservation Act (NHPA).¹ The ideas being considered for the potential Program Comment and consultation are described in the attached Program Comment For Planned Construction of Positive Train Control Facilities Within the Railroad Bed Section 106 Scoping Document for Consultation with Tribal Nations (Tribal Nations Scoping Document), which is also being conveyed directly to Tribal leaders, THPOs and cultural preservation officials pursuant to our federal trust responsibility to Tribal Nations.

While some organizations seek to improve their participation in the consultation process,

Tribes Vetting 22,000 Antennae Halt \$13 Billion Rail Plan

by Angela Greiling Keane and Todd Shields

October 20, 2013 – 10:00 PM MDT



■ Railroads had asked Congress for a three-year extension to install the wireless system train control, citing the cost and time to develop, buy and manufacture software and hardware. Photographer: Luke Sharrett/Bloomberg

... others still question the basic principle of consulting with Tribes



NATIONAL ASSOCIATION OF TRIBAL HISTORIC PRESERVATION OFFICERS

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NEWS RELEASE

For Immediate Release

Contact: NATHPO (202) 628-8476 or info@nathpo.org

TRIBAL NATIONS WORKING TO ENSURE RAIL SAFETY FOR ALL AMERICANS

WASHINGTON — May 30, 2014 — Tribal Nations across the country are working to ensure the safety of all Americans by working with the main railroad companies and two Federal agencies to implement Positive Train Control (PTC) along 60,000 miles of railroad tracks. Tribal Nations will be active participants in the deployment of about 20,000 PTC telecommunication poles and wayside structures that will be installed along railroad tracks that are located almost exclusively in the continental United States.

"This is the dawn of a new era in the relationship between Indian tribes and the railroads," stated D. Bambi Kraus, president of the National Association of Tribal Historic Preservation Officers (NATHPO). "There are many challenges ahead, but for the first time in 150 years, Indian tribes and Tribal Historic Preservation Officers (THPOs) will be working together with the railroads to accomplish the shared goal of making the railways safer, without sacrificing the tribal history that is located along those same tracks."



And still others have gone one step further and declared their own requirements.

“Earlier this year Strata Energy determined that they no longer needed to have a PoO. As such, Strata Energy feels that there is no longer a need to have BLM involved in the Programmatic Agreement (PA). A couple of months ago, Strata Energy sent a letter to BLM formally withdrawing the PoO from BLM’s consideration and requesting BLM to be removed from the PA. BLM is currently evaluating Strata Energy’s request, and thus far no action has been taken. At this time, the NRC is looking into the potential next steps. We welcome comments or question that you may have.”

The OPPORTUNITY to COMMENT, when provided, is just the beginning.

Initiation should be taken seriously and should not simply be a box to check on the list of steps to begin development projects.



Indiana DOT, SHPO, and Federal Highway Administration employees held their first tribal consultation workshop with tribes who have ancestral homelands in Indiana in 2015; MOU was presented for signature in summer 2016.

Tribal Consultation In A Perfect World

- **Begins as soon as project planning has begun.**
 - Includes all parties with federally-recognized ancestral homelands in the project area
 - Takes place in accordance with a PA/MOA/MOU put in place prior to the project with stakeholders as signatory parties
 - Includes an ongoing conversation between Tribes and the project coordinators for the duration of development, and annual discussions re:maintenance



Tribal Consultation In A Perfect World

- **Respect traditional values**
 - Provide food and tobacco offerings, opportunity and supplies for smudging
 - Provide time for socialization and for representatives to familiarize with area
 - Allow prayers and stories to be told
 - Respect protocols (offerings, sacred space practices, male/female objects)

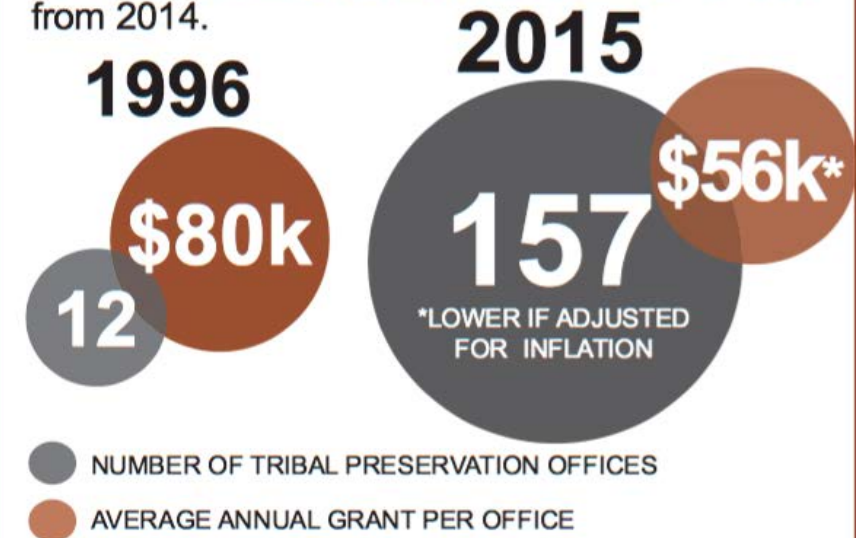


Tribal Consultation In A Perfect World

- Funding should be made available to Tribal representatives to cover the cost of consultation
 - 174+ Federally recognized Tribes are eligible to receive annual HPF grants, which each run for two fiscal years
 - In 2015, 145 THPOs applied to receive an average of only \$60,213 per tribe
 - “No THPO dollars toward consultation” is a common policy to protect limited funds
 - Not all tribes receive THPO grants in the first place; there may not be any federal money from which to draw expenses

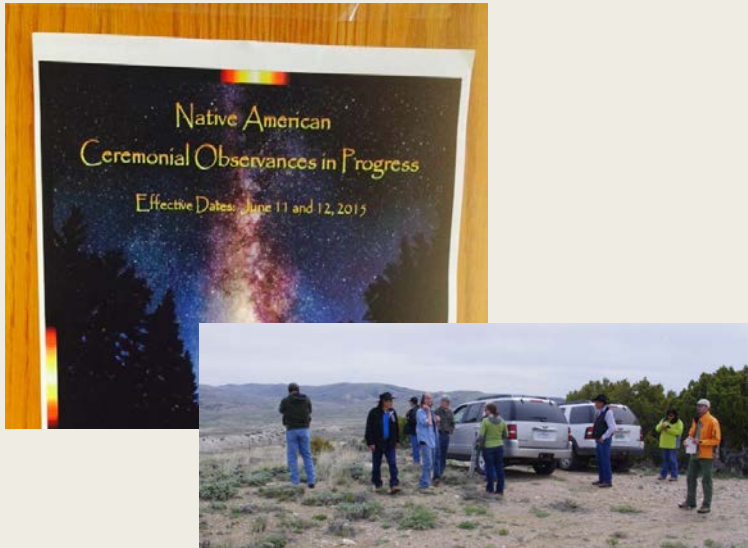
Growing Scarcity

Since 1996, the rapid growth in tribal preservation offices- mirroring the program's popularity with native groups- has outstripped funding, the average grant dropping from \$80,000 to \$56,000.* Average awards are down by \$4,000 from 2014.



Examples of Successful Consultation

University of Michigan NAGPRA Consultation



BLM Moneta Divide Annual Consultation



Community building at NATHPO Annual Meeting



First People's Ulm Pishkun Buffalo Jump Annual Meeting



NATHPO & NPS: Power of Preservation in Indian Country



FHWA & INDOT Tribal Consultation MOU meeting



This presentation was originally created during my tenure as Senior Tribal Archaeologist for the Chippewa Cree Cultural Resources Preservation Department.

I am now working as an environmental resources consultant and tribal liaison, and am able to provide professional resources and services to assist with thoughtful, culturally-sensitive approaches to cultural resource management under the requirements of US Federal Laws and Regulations.

If you are interested in my services, or have any questions related to this presentation, I can be reached via email at kjnmyers@gmail.com.

Thank you, *Miigwech Chi-miigwech, kinana'skomitina'wa'w*