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Tribal Summit on Renewable Energy

**January 12-13, 2011
Palm Springs, California**

Executive Summary

The Advisory Council on Historic Preservation (ACHP) and National Association of Tribal Historic Preservation Officers (NATHPO) recently coordinated a Tribal Summit on Renewable Energy on January 11-13, 2011, in Palm Springs, California. Recognizing that renewable energy and its potential effects on historic properties remain areas of concern for Indian tribes, the summit brought together more than 150 tribal representatives and officials from federal, state, and local government and the private sector to share information and discuss local and national implications. The summit included an overview of upcoming federal renewable energy projects and highlighted issues of tribal concern related to past and proposed renewable energy development, such as consultation, timeframes, and indirect and cumulative effects to sites of religious and cultural significance.

The Summit provided an unprecedented opportunity for tribal leaders and federal officials to address the broad implications of renewable energy development and transmission on historic properties. While many of the issues raised at this Summit are not new, the broad scale and fast pace of development poses unique challenges to those who address these issues through individual reviews on energy projects conducted pursuant to Section 106 of the National Historic Preservation Act.

The results of these discussions will be carried forward by the ACHP in its interaction with federal and non-federal stakeholders in a variety of energy related working groups and inform priorities for addressing the challenges

these issues present to renewable energy development. A summary of the issues identified during the Summit is provided below. We encourage those involved in the consideration of the impact of renewable energy development on historic properties to share this summary within their organizations so that all who have a stake in this issue benefit from these findings, observations, and recommendations.

Summary of Key Issues

Trust responsibility. As a cornerstone of the government-to-government relationship between federally recognized Indian tribes and the United States government, federal agencies must recognize their trust responsibilities to Indian tribes.

Scale. The overwhelming nature of projects can complicate participation in Section 106 reviews due to the large volume and expedited pace of renewable energy projects. Additionally, the large scale of these projects is presenting strain on resources among Indian tribes, states, and federal agencies.

Consultation. Federal agencies must ensure appropriate and effective consultation. Consultation should be initiated early in consideration of project development so that historic preservation issues can inform site selection for individual projects. Participants also stressed the importance of conducting consultation at the government-to-government level, directly with the federal agency rather than through consultants, unless expressly authorized by the Indian tribe. Consultation presents an opportunity to build a relationship between federal agencies and Indian tribes and, as such, it should be proactive and geared toward resolving issues and reaching agreement where possible. It was further recognized that additional training in Section 106 is needed among all participants in the Section 106 process, and that the ACHP and NATHPO provide training and resources in these areas. The ACHP offers a handbook on consultation at <http://www.achp.gov/regs-tribes2008.pdf>. Free online training developed by the Interagency Working Group on Indian Affairs entitled “Working Effectively with Tribal

Governments” is also available at <http://tribal.golearnportal.org>. NATHPO provides a consultation best practices document at http://www.nathpo.org/PDF/Tribal_Consultation.pdf.

Communication. Participants embraced the idea of hosting more regional discussions and workgroups to address renewable energy issues, and also pointed to the importance of agencies and Indian tribes maintaining up-to-date contact lists for the local, regional, and national level. Use of the ACHP’s list of federal contacts at <http://achp.gov/docs/FederalAgencyContacts.pdf> was also encouraged. Participants also sought the attention of federal agencies at the headquarters level to address chronic problems with conducting Section 106 at a regional/district office, and pointed to the value of appointing Native American liaisons in federal agencies to address and resolve common issues.

Being proactive. Federal agencies should directly address those comments from Indian tribes that are often repeated over time and from project to project to resolve them once and for all; agencies such as BLM should consider also permanent set-asides of land that contains significant historic properties and consider using other lands to meet multiple use mandates. Further, agencies should identify areas important to tribes in advance of individual projects and determine appropriate ways to advise applicants about these areas to inform alternative site selection.

Identification and evaluation. Federal agencies should encourage applicants to fund survey work on a broader level than project-by-project inventories, and consider also the challenges presented by an over dependence on phased inventory that can complicate matters by delaying the recognition of critical historic properties earlier on in planning when alternative locations could have been considered. Participants recognized also the importance of identifying and considering historic properties at the landscape level and to avoid inappropriately breaking these larger properties down into smaller units that end up being managed separately and out of context. Further discussion was focused on National Register criteria that are not always adequate for addressing the significance of some properties and the

inadequacy of the Secretary of Interior's qualification standards for addressing tribal expertise. Finally, participants recognized the value of a comprehensive inventory of historic properties but warned access to such an inventory must be strictly controlled and not substitute for meaningful consultation that includes resource identification and evaluation.

Addressing impacts. Participants acknowledged that there is a need to better assess long-term impacts and those that may occur throughout the lifespan of projects, as well as regional, indirect, and cumulative impacts that may go beyond public lands, and to acknowledge that these impacts are not only on the land, but also on people and life ways.

Alternatives. Participants acknowledged that predetermined project locations stymie meaningful consultation and do not allow for real consideration of alternatives. Federal agencies should provide clearer indication of their criteria for determining appropriate siting for such projects.

Enforcement of agreement documents. Participants suggested that ensuring that agencies implement agreed upon actions is critical and that there should be clear repercussions for agencies that do not meet their obligations either for consultation or implementing agreement documents. It was also recommended to further consider how to resolve differing perceptions of consultation sufficiency, as was development of standards against which consultation can be measured.

Resolving effects and mitigation. Much discussion was also directed toward the challenge of resolving adverse effects to historic properties that possess qualities that cannot be mitigated. Participants expressed preference that avoidance of adverse effects to properties of traditional and cultural significance to Indian tribes be given first consideration, followed by minimizing impacts, and mitigation as a last resort. Participants also recognized that even if it is not possible to mitigate adverse effects, it is important to think creatively and explore creative alternatives, including the following:

- Museum exhibits and other types of interpretation
- Native language revitalization programs
- Tribal member scholarship programs in order to create future cultural resource professionals within tribes
- Restoration projects
- Funding of ethnographic studies
- Fund larger, regional studies to address cumulative impacts
- Create fund endowments (model might be what is being decided for oil spill in the Gulf)
- Fund expansion of tribal cultural resource departments to enhance capacity to keep up with projects
- Land exchanges with tribes
- Technology upgrades for tribes

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