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**California Historical Resources Information System
Native American Tribal Access Policy
Comments Received as of 2/13/15
DRAFT**

The California Office of Historic Preservation held a series of public meetings to gather information from Tribes concerning the adoption of a policy for Native American access to information managed by the regional Information Centers of the California Historical Resources Information System. At the meetings, the attendees were asked to discuss the possible content of the policy based on the following issues. The information below reflects comments received at the public meetings and in writing.

1. Should the Tribal Access Policy apply only to California Native American Tribes and their governing Tribal Councils and official representatives; or should it also apply to Native American individuals not directly representing tribal governments?

- Access should be limited to tribal governments, not unaffiliated individuals
- Access should include non-Federally Recognized tribes
- Individuals may not have tribes best interest in mind (MLD list concern)
- It is not the State or Federal governments' business to say who should and should not have access
- No problem with other tribes getting access, but would have a problem with some individuals
- Policy should allow for access by individuals
- Only apply to California Tribes or apply to California tribes first
- Policy being limited to tribal governments makes sense, but what about individuals who have been unenrolled?
- Prefer narrower rather than broader access
- Somewhat restrictive access preferred, start by working things out with THPOs
- Would seem to need to be some sort of limitation on who gets access because otherwise anyone could just say they're Native American
- Policy should apply to tribes and tribal communities, with a separate access policy for individuals.
- Recommend access to Indians for all types of records searches including private research and compliance.
- Recommend access to Native Americans for all types of records searches, which includes private research and compliance.
- Should apply to federally and State-recognized tribes.
- Should apply to tribes and their governing councils. If individuals want access, they would need tribal council approval.
- Question if SHPO has the authority to limit access to only some tribes or types of tribes.

2. In identifying Tribes and/or individuals to whom this access policy will apply, what list(s) should be used (e.g., the NAHC SB18 Tribal Consultation List and/or other lists)?

- Access and identifying tribes and individuals (SB 18 & AB 52) can be confusing
- Allowing access for unrecognized tribes could jeopardize confidential information
- Policy should not apply to everyone included on NAHC's list of interested individuals (SB 18 list is full of individuals, not just tribal governments)
- Need the flexibility to make changes to lists
- Could use Indian health services list of tribes
- May be okay to use existing lists
- NAHC list not adequate, will not defer to that agency
- Non-federally recognized tribes should not get access under the policy
- Non-federally recognized tribes need data/support the most
- Policy should recognize distinction between federally and non-federally recognized tribes and only apply to federally recognized tribes (those that are not federally recognized can work through a federally recognized tribe)
- SB18 and other NAHC lists problematic. Misuse of lists to attain federal recognition
- SB18 list problematic, prefer MLD or NAHC contact list, concerned over folks using CHRIS access to legitimize status as Native Americans
- Shouldn't use NAHC's SB18 list because it doesn't have stringent enough requirements for getting on list
- State-recognized tribes (NAHC SB 18 list) should be included
- Suggest using NAHC's SB 18 consultation list for tribal governments
- Supports access by non-federally recognized tribes on NAHC SB 18 list
- One of the non-federally recognized tribes currently accesses information through another (federally recognized) tribe's agreement, but it's inefficient and seems duplicitous
- Tribes should be either Federally-recognized, or on a State-recognized list, or be a nonprofit with federal recognition as a Tribal Community
- Lists used by NAHC, principally SB18 list, are in many cases outdated and inaccurate. Also problematic because it applies only to tribal governments and some groups may not have tribal governments that are recognized by the NAHC.
- The SB 18 tribal consultation list will work as long as it is updated regularly.
- Question if SHPO has the authority to limit access to only some tribes or types of tribes.

3. What documentation should be used to verify who is authorized to access data on behalf of a Tribe?

- Access should only be granted to individuals with a resolution from the tribal council

**California Historical Resources Information System - Native American Tribal Access Policy
Comments Received as of 2/13/15 - DRAFT**

- Authorization for access should be documented through a resolution from the tribal council
- Authorization should come through some sort of verification from tribe
- Council as a whole should make a decision about who gets access, not just the chair or secretary
- Documentation showing proof/validity important, tribal council resolution for access
- For individuals to gain access, should have resolution from tribal council, needs to be more formal than a letter
- If a tribal council so chooses, resolution or letter authorizing individual access could specify what records that person gets access to
- Individuals accessing information on behalf of a tribe should be formally authorized to do so through a resolution from the tribal council
- Individuals accessing information on behalf of a tribe should be formally authorized to do so either through a resolution from the tribal council or a letter from the tribal chair
- Individuals need to provide a letter or documentation from the tribal council, but it's reasonable to assume THPOs have access
- Individuals should be designated by the tribal council
- Individuals should have a letter from the tribal council or chair to get access
- Letter from tribal chair (and possibly also signed by others) should be required for individuals to get access to data
- Limit access to require tribal permission
- Non-federally recognized tribes may not have a formal tribal council, leader may be the spiritual leader of the tribe; wide diversity of tribal structures needs to be considered
- Not everyone has tribal I.D. cards, so it could be problematic. Tribes can make the distinction and communicate to CHRIS
- Obtain permission through tribe (or THPO) that the individual is representing. Tribes without THPO may have other governing bodies that could approve access.
- Pauma require letter from tribal chair for access to information about their lands
- Should leave decision for how to designate individuals up to the individual tribal councils (resolution or letter)
- Should limit access to designated individuals, but be inclusive rather than exclusive
- THPOs should be empowered to grant others access to CHRIS information
- THPOs should be granted direct access to CHRIS information
- THPOs should have access based on their status
- Tribal chair should identify who has authorized access, but realize that non-federally recognized tribes may have multiple governments
- Tribal Council should decide who has access
- Tribal Council should develop a list of tribal members who can have access to records
- Tribal Council should provide letter allowing access to records pertaining to their tribal land for non-affiliated tribes

- Tribal government needs to grant permission for individuals to access data, but tribes might vary on type and level of documentation required
- Tribal Leaders should designate who has access
- Tribal leadership should make decisions on who has access to records on tribal land/ in area of interest or traditional use
- Documentation required should be a letter from the Chair verifying person is conducting a search on behalf of the tribe.
- Important to note that searches may be done by a contracting archaeologist working for a tribe.
- Would like that our tribe be contacted for verification before allowing anyone claiming to be a representative or tribal member wanting to view information from the CHRIS.
- Tribal organizations and governments hold the authority to determine who of their citizens and membership are approved to access CHRIS information; documentation comprising a letter or a card provided by the Tribe will be signed by the Tribal Chair and conferred on the authorized California Indian.
- THPOs should be assumed to have access automatically.
- Letter from tribal council giving authorization to represent the tribe.
- Question if SHPO has the authority to require certain type(s) of documentation to allow access for individuals representing tribes.

4. Should access for individual Tribes and/or persons be limited to defined regions, and, if so, what data should be used to determine these regions?

- AB 52 is apparently asking for maps of ancestral areas, might be able to use those for access limitations
- AB 52 mapping efforts should be used for delineating tribal lands
- AB 52 maps not favored for areas/access delineation
- As an example, Smith River have some shared areas of interest with the Yurok, and agencies consult with all the tribes
- Believe it's important to define geographic regions for access
- Could consider not having geographic limitations on access, but other tribes with an interest in the area get notified
- Should use defined regions; ethnographic boundary maps can be useful; should be based on Tribe's territory
- Don't know why anyone would want information from another part of the state, but there are overlapping areas of interest between tribes
- Don't think that CHRIS data should have geographic restrictions, better to provide for more open access for tribes
- Federally recognized tribes should work with non-federally recognized tribes to come to agreement on areas of interest
- If geographic limitations are used, look for existing maps that can be used for this purpose rather than creating something new
- If policy will limit access to certain region(s), consider seeing if tribes can agree amongst themselves about those regions and who gets access to what

- In relation to limiting access to certain region(s), people moved around a lot after European contact and therefore someone may want to do research in an area not within their tribal lands or ancestral territory
- In terms of access, should be no difference between formal tribal lands and areas of interest/ancestral areas
- In terms of geographic limitations on access, shouldn't deny access to anyone for ancestral lands (tribal constitutions should identify ancestral lands)
- NAGPRA process as model for addressing issues where multiple tribes have an interest
- No need for a southern California tribe to access data for northern California
- Overlapping boundary issues should be resolved among tribes
- Perhaps areas of interest could be self-identified by tribes; would be fishy to have a southern California tribe asking for information for northern California, for example
- Probably should not consider using AB 52 maps as they may be contentious
- Recognized tribes should work with non-recognized tribes in managing information on overlapping lands
- Respect neighboring tribes and ancestral boundaries
- Restricting access to other tribes in relation to geographic areas isn't something Agua Caliente is interested in advocating for
- Table Mountain works with three other tribes in a consortium and often work things out that way
- Tribes should be able to work out amongst themselves conflicts over overlapping areas of interest
- Tribes should delineate their own lands and cooperate on territorial overlaps
- Tribes work out regional disputes among themselves
- Applicable territory for records searches should be the Traditional Use Area for the tribe, not limited to Ancestral Territory.
- Putting limitations on tribal access to the CHRIS appears to be inconsistent with unrestricted access provided to archaeologists.
- There should be no restrictions as other CHRIS users have access to all parts of the state.
- Access should be limited to each tribal nation's territory; if there is a need to explore other tribal territory, that tribe should work with the tribe that is in that area.
- Question if SHPO has the authority to limit access to a specified region or portion of the state.

5. What provisions should be included in the access policy to maintain appropriate security of, and access to, confidential (i.e., archaeological and/or tribally sensitive) information provided under this policy?

- Better coordination with NAHC Sacred lands file to protect sensitive data
- Policy could specify restrictions on tribes who are sharing the information with others
- Protection of sensitive confidential information is what's most important

- Secure connection, track user accounts and what is downloaded, notification
- Share information with Tribal neighbors; recognized Tribal entities approve other Tribe's access to their information.
- Confidentiality should be maintained according to existing SHPO/CHRIS guidelines.
- Same provisions as are in place for other CHRIS users such as archaeologists, historians, State employees, and architects.
- Need a signed confidentiality statement, and if it is proven that a person has violated the confidentiality statement, there should be a large fine and loss of access to the CHRIS.

6. What type of coordination should occur between Tribes, the CHRIS, and other parties to clearly communicate and address tribal concerns about maintenance of and access to sensitive information that is maintained in the CHRIS Inventory?

- Coordinate/facilitate tribe to tribe outreach
- Coordination meetings, periodic and as needed
- Coordination through regular meetings (Quarterly/Bi-annually)
- Have periodic CHRIS workshops with tribes
- Notification of searches on aboriginal territories
- Tribes should be included in the ICPAC
- Suggest quarterly meetings or consultations to share information, learning, and concerns about CHRIS records.
- Consultation, consultation, consultation

7. What fees should be charged for accessing the CHRIS inventory (through either Information Center staff-conducted records searches or in-house records searches conducted by authorized representatives of tribal governments or individual tribal members)?

- A subscription service should be considered for CHRIS users
- Access fees impede tribes' ability to use the Information Centers, but it's fine to have to pay for copies/CDs
- At-cost copy fees okay, but not overall fee schedule
- Because reservations were imposed on the tribes, access to ancestral territories should also be at the same cost as for tribal lands
- Consider using a sliding scale for fees based on tribal income, don't think that well off tribes will begrudge others for paying lower fees because they have less funding (BIA does this on some issues); but if a sliding scale is used, needs to be thoroughly discussed with tribal councils
- Current fees are prohibitive to many tribes
- Developers should pay for information searches completed by tribes
- Fees could be charged for IC staff-conducted records searches to cover staff time but should be free for in-house records searches

- Fees shouldn't apply if Native Americans do the research themselves, small fee if IC staff do the search
- If a paid records search was also done for a project, is there a way to just provide a copy of that to a tribe at no cost?
- If a records search has already been paid for, couldn't consulting parties get a copy of it at no cost?
- Many ICs already provide THPO access to digital records at no charge, so it must be do-able
- Need to look at getting grants of \$\$ from foundations to cover costs of providing data to tribes
- Research how the CHRIS may be able to recapture THPO funding that's been turned down to use it to cover costs of providing THPO's access to inventory
- Should be no differences in fees for trust/tribal lands versus ancestral lands
- Shouldn't have to pay fees when accessing information for advocacy purposes and reviewing projects
- Sliding scale for fees, for poorer tribes
- Some openness to a sliding fee schedule for tribal access – full fee for development projects but reduced for resource protection activity
- Some tribes have resources to pay fees, but some don't (Recommends scaled fees for tribal access). Tribes with least means need the most support with fees.
- State should support the CHRIS directly or find ways to support the CHRIS without requiring that advocates for preservation (like the tribes) pay for access
- THPOs shouldn't be charged for data because they're helping to improve the quality of the data by providing feedback to the CHRIS
- Tribes do not like being charged user fees for their own lands
- Would make sense for tribes that are reviewing projects to have the fees waived like they are for researchers
- Fees should be waived for records searches, but charging fees for supplies used in the search is okay. One paper or digital copy should be provided free of charge for each records search.
- Opposed to having hourly labor fees charged to tribes for records searches, but supports fees for supplies and copies.
- The access fee for in-house records searches should be waived for qualified California Indian Tribes for research concerning their ancestral homelands for any purpose.
- For IC staff-conducted records searches, need to discuss fee scale.
- Copy fees okay, but should be no fee for digital data.
- There should be no fees for federally-recognized tribes.

8. Assuming that confidential archaeological and other tribal resource information is adequately secured and password protected, would you be willing to (or prefer to) access the CHRIS inventory via the internet rather than through an in-person or CHRIS staff-performed records search?

**California Historical Resources Information System - Native American Tribal Access Policy
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- Accessing large files online may be a problem with tribes with bad or inconsistent Internet access (need to look at having multiple means of delivering information)
- Consider only allowing users to view the data online, but not download or print it so it can't be shared with others
- Data being online is a little scary, but believe we can come up with a resolution
- ICs should remain open for in person support, but online access to data would be useful
- If information can't be provided online, what about a secure drop box?
- If online access is made available, need passwords for identified/authorized users
- If providing information online or through Internet, need additional security or something like a drop box
- If using an online access system, would be good to be able to track what data is downloaded by each individual user (each user would have an individual account) and info can only be shared with designated authorized users
- Important to have regional access until digital access is possible because tribes use IC to do own searches to save money
- In-office (remote) access preferred
- Like being able to go into a physical location and be hands on with the data as well
- Multiple delivery mechanisms, file size and connectivity issues, so not all can be done over the internet
- Online access problematic, but digital data is good
- Online good, but concerns over who has access/security. Offline better, due to issues with online
- Should require training for people with online access so they understand security requirements and need for confidentiality
- There is concern about easier access to digital data and information therefore ending up in the hands of the wrong people
- Very concerned about how you protect confidential information once it's online
- When it comes to online access, tribes want something simple, would be more successful with a simple system
- Will the digital environment replace all other means of information access?
- Would love online access, so data can be available wherever I happen to be (office, when traveling, library)
- Would love to be able to access the inventory remotely but wouldn't want that kind of access to be granted to anyone but THPOs
- Would prefer that confidential information not be networked, available online
- Would support digital access w/ proper security
- Support digitization of records, provided that existing levels of security are maintained in the new format.
- Recommend waiving all hourly fees for tribes for records searches, however support fees for supplies and copies.
- Would like to access online, assuming security is maintained.

Other Comments: About the Way Tribes Interact with the CHRIS

- Be aware that some tribes won't share information with the CHRIS in terms of what's found when monitoring
- Consider giving some authority to tribes to act as stewards for the resources as part of what comes with a subscription
- Important to note that federally recognized tribes can appoint a THPO even if it's not through the formal NPS designation process
- Important to remember that tribes aren't just another CHRIS stakeholder, have special rights and concerns
- May be problems with using Access and Use Agreement with tribes as many tribes may not be willing to sign the agreement because they need to be able to share the information with agencies or developers, also brings up issues of tribal sovereignty
- Policy should be able to be responsive to individual tribes' wants and concerns
- SHPO should go to SHRC/ICPAC with tribes, as partners
- THPO access as a partnership, help in finding errors
- THPOs and Tribes need training on how IC system works
- Would be good to hold workshops/open houses for tribes to introduce them to the CHRIS inventory, consider including something as part of training BIA provides

Other Comments: About the Way Non-Tribal Entities Interact with the CHRIS

- Concern about IC recommendations sometimes, including concern with human remains recommending NA Cultural Specialist. Generally referring project proponents to tribes needed. Maybe informational cover sheet
- Important to note that suggestions made by ICs may not be accurate—such as then they recommended required review by a qualified archaeologist but not tribes (undermines tribes' authority)
- Need to find a way to require people to give information to the CHRIS for inclusion in the inventory
- Policy should specify that agencies can share records search results with tribes without violating their access and use agreements
- Projects where records searches not done, things got missed. Interested in changing state law.
- Some regions, sites, portions of reports could be restricted until tribe approves release of the information on a case-by-case basis
- Some tribes may want to be notified if someone is doing a records search in an area of interest to them
- Suggest there be a CHRIS policy to direct agencies to contact the tribes for information (can be a suggestion even if it can't be required)
- Tribes being notified of people accessing information in their ancestral territory would be very useful; to deal with privacy issues, perhaps could just identify the organization or agency the individual requestor is representing
- Would be fine for CHRIS to direct a requestor to talk to a tribe to get access to data for a specific area (and give specific contact information for the tribe)

- Would be great if the CHRIS could provide better direction to people receiving information about their responsibilities related to the data, perhaps something the receiver could sign before getting the data
- Would be nice if there's a way to automatically notify THPOs when someone accesses information in their ancestral lands

Other Comments: About the Process of Developing This Policy

- Concern that things not get taken out of the hands of THPOs/THPO task force set up to work with OHP
- Could decide on authority/ability to do individual agreements with tribes on a tribe-by-tribe basis, if a tribe is willing
- Could have a statewide policy and then leave the door open for individual agreements
- Current access policies work very well, do individual records searches for projects they're reviewing
- Don't need to create a new policy for access, current access policy works well
- In addition to written agreements between individual ICs and tribes, there are also verbal agreements related to access
- Individual agreements should not be mandatory
- Need grievance process for issues between tribes (?)
- New Mexico and Washington policies should be used as models
- Policy needs to be flexible to allow for tribal differences
- Recommend bringing tribes back together for follow-up to these meetings
- SHPO doesn't have authority to enter into agreements with tribes as sovereign nations
- Start with THPO tribes first as a test model
- There should be an option for individual tribes to negotiate stand-alone agreements with the SHPO while we're still working on the statewide policy
- Whatever draft policy is developed, when SHPO puts it out there, need to explain how it will actually work in reality for tribal councils to really be able to consider and comment on it
- Would prefer to have individual agreements between SHPO and tribes for access rather than an overall policy

Other Comments: General

- General CHRIS access policy (for everyone) should include monetary penalties for violations and a grievance process
- Problem with oral histories at universities that contain locational information but aren't considered confidential
- The FCC TCNS model could be used as a prototype
- THPOs should be granted control of information on tribal lands
- Consultation lists should be created by tribes instead of the NAHC