



ADVISORY COUNCIL ON HISTORIC PRESERVATION

# CASE DIGEST



Protecting Historic Properties:  
Section 106 in Action

Winter 2006

An independent Federal agency, the ACHP promotes the preservation, enhancement, and productive use of our Nation's historic resources, and advises the President and Congress on national historic preservation policy. It also provides a forum for influencing Federal activities, programs, and policies that affect historic properties. In addition, the ACHP has a key role in carrying out the Administration's *Preserve America* initiative.

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*Cover:* Six-lane highway alternative visual simulation view looking southeast near Idaho Springs City Hall, CO.  
*See page 3 for details. (FHWA)*

## ABOUT THIS REPORT

Section 106 of the National Historic Preservation Act requires Federal agencies to consider historic preservation values when planning their activities. In the Section 106 process, a Federal agency must identify affected historic properties, evaluate the proposed action's effects, and then explore ways to avoid or mitigate those effects.

The Federal agency often conducts this process with the Advisory Council on Historic Preservation (ACHP), State Historic Preservation Officers, representatives of Indian tribes and Native Hawaiian organizations, and other parties with an interest in the issues.

Sometimes a Programmatic Agreement (PA) or a Memorandum of Agreement (MOA) is reached and signed by the project's consulting parties. A PA clarifies roles, responsibilities, and expectations of all parties engaged in large and complex Federal projects that may have an effect on a historic property. An MOA specifies the mitigation measure that the lead Federal agency must take to ensure the protection of a property's historic values.

Each year thousands of Federal actions undergo Section 106 review. The vast majority of cases are routine and resolved at the State or tribal level, without the ACHP's involvement.

A considerable number of cases, however, present issues or challenges that warrant the ACHP's attention. The criteria for ACHP involvement in reviewing Section 106 cases are set forth in Appendix A of the ACHP's regulations. In accordance with those criteria, the ACHP is likely to enter the Section 106 process when an undertaking:

- has substantial impacts on important historic properties;
- presents important questions of policy or interpretation;
- has the potential for presenting procedural problems; and/or
- presents issues of concern to Indian tribes or Native Hawaiian organizations.

This report presents a representative cross-section of undertakings that illustrate the variety and complexity of Federal activities in which the ACHP is currently involved.

It illustrates the ways the Federal Government influences what happens to historic properties in communities throughout the Nation, and highlights the importance of informed citizens to be alert to potential conflicts between Federal actions and historic preservation goals, and the necessity of public participation to achieve the best possible preservation solution.

In addition to this report, at [www.achp.gov/casedigest](http://www.achp.gov/casedigest), the ACHP's Web site contains a useful library of information about the ACHP, Section 106 review, and the national historic preservation program.

## ARIZONA

**Project:** Termination: Update: Microwave Communications System and Tower at Mount Graham International Observatory, Coronado National Forest

**Agency:** U.S. Forest Service

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The U.S. Forest Service (USFS) proposes to issue a special use permit allowing construction of a microwave tower on Mount Graham. On January 5, 2006 the USFS terminated consultation on the project. The ACHP is currently formulating comments to be provided to the chief of the USFS.

Known as Dzile Nchaa Si'An to the Western Apache Tribes, Mount Graham is one of their four sacred mountains. It is also the site of the Mount Graham International Observatory (MGIO) operated by the University of Arizona with other research partners including the Vatican Observatory. The MGIO has two operational telescopes with the third to begin operating in 2006. The University of Arizona plans to install a replacement microwave communications system to service the observatories.

The Arizona-Idaho Conservation Act of 1988 permitted construction of the MGIO with at least three observatories and support facilities on Mount Graham in southeastern Arizona. The Act determined that the National Environmental Policy Act (NEPA) compliance had been satisfied. The Act does not include mention of the Section 106 process of the National Historic Preservation Act. During initial construction of the MGIO, the tribes requested that the Advisory Council on Historic Preservation (ACHP) become involved to ensure Section 106 compliance. The USFS, with Department of Justice support, disagreed and construction continued.

The ACHP became involved in the communications systems consultations in November 2004 after the USFS



Large binocular telescope during construction, 1999  
Mount Graham International Observatory,  
(University of Arizona)

determined that the communications system tower would have an effect on the Mount Graham Traditional Cultural Property. Mount Graham was once located upon the San Carlos Apache Reservation but was taken from the tribe in 1872 through an executive order. The tribes believe that spirits known as Gaahn reside on the sacred mountains and provide spiritual guidance, health, and direction. In addition, the Apache people pray to the mountain and its spiritual power.

In addition to the ACHP and USFS, consultations include the University of Arizona, Arizona State Historic Preservation Officer (SHPO), San Carlos Apache Indian Nation, White Mountain Apache Indian Nation, Yavapai-Apache Nation, and the Apache Survival Coalition. The central issues in the consultations are that the presence of the MGIO interferes with the Apache religious traditions. The tribes want the University and the USFS to commit to a date for removal of the MGIO. Secondly, the tribes believe that the microwaves and the metal in the support tower will further degrade their ability to pray to the mountain and the Gaahn. The tribes have asked that the tower be constructed of wood, or that a fiber optic system be installed between the MGIO and its base station.

A series of consultation meetings were held between December 2004 and June 2005. At the final meeting, the USFS and the tribes agreed that the tribes would provide language and mitigation measures for the

microwave tower. However, the USFS determined that the suggestions subsequently received were either new measures not previously discussed or that they violated the Arizona-Idaho Conservation Act. In early August 2005, the USFS and the University of Arizona signed a Memorandum of Agreement (MOA) and asked the other parties to sign. The tribes refused, and the ACHP recommended that the wood laminate or composite tower be erected rather than the metal or microwave structure. After several months of negotiation between the ACHP and the USFS, the USFS terminated consultation on the issues. As the Case Digest Winter 2006 edition was being prepared, the ACHP was soliciting public input for formal comments to the Chief of the USFS.



I-70 corridor simulation, middle right, above Georgetown (FHWA)

## COLORADO

**Project:** Update: Expansion of the Interstate Highway 70 Corridor

**Agency:** Federal Highway Administration

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Western Colorado's Interstate Highway 70 (I-70) is the major east-west highway corridor linking Denver and many Colorado mountain communities. The highway traverses several historic communities, including the Georgetown-Silver Plume National Historic Landmark, and the Hot Springs Historic District in Glenwood Springs.

The Federal Highway Administration (FHWA) and the Colorado Department of Transportation (CDOT) plan to increase traffic lanes or add rail or bus service to I-70 to reduce congestion and improve traffic circulation.

Since all proposed alternatives will be built within the existing right-of-way, relatively few historic properties will be directly impacted physically. However, noise and visual effects on heritage resources are expected.

Following creation of a CDOT Tier I Programmatic Environmental Impact Statement (PEIS) on the I-70 Corridor Project, as noted in the Summer 2005 Case Digest report, work has continued with consulting parties on a draft Programmatic Agreement (PA). To this end, FHWA and CDOT met with the PA signatories – the Advisory Council on Historic Preservation (ACHP) and the Colorado State Historic Preservation Officer (SHPO) – and their consultants in August 2005 to discuss the basic PA framework. The purpose is to provide a process for phased consultation under Section 106 as project planning progresses, and to coordinate Section 106 compliance with the tiered National Environmental Policy Act (NEPA) process.

By executing the PA before the Tier I decision is reached (e.g. the mode or modes of transportation that will be developed for the I-70 corridor) – which is our expectation – CDOT and FHWA will ensure that historic properties are given an appropriate level of consideration during early planning. Because all proposed alternatives will be built within the existing right-of-way, only a few historic properties will be directly impacted by any of the alternatives. An initial analysis of noise and visual impacts contained in the Tier I Programmatic EIS indicates that the major impacts to historic properties will be noise and visual impacts to the historic districts. At the meeting in August 2005, CDOT's consultants agreed to consolidate information on indirect effects

(noise, visual, vibrations) to the historic properties and provide it to the consulting parties.

A draft PA and summary of effects was transmitted to all the consulting parties on January 18, 2006. It includes provisions for a more detailed identification of historic properties within the area of potential effects after an alternative has been selected. FHWA and CDOT would be required to conduct additional inventory and evaluation of historic buildings and structures in the historic towns along the corridor; evaluate the effects of the proposed action on all National Register eligible properties; and consult with all interested parties about how those effects may be avoided, minimized or mitigated. To assist this process, and ensure that the concerns of historic preservation advocates are addressed, the PA proposes that CDOT develop a Historic Context or Contexts for the Mountain Corridor; commit to looking at a wide range of possible impacts to the historic areas (including cumulative impacts); and develop design guidelines and a plan for interpreting the history of the corridor. CDOT scheduled a meeting of all the consulting parties on February 13, 2006, to discuss the draft PA.

**Background:** The proposed I-70 project involves 144 miles of interstate highway that extends west from Denver and goes through five Colorado counties (Garfield, Eagle, Summit, Clear Creek, and Jefferson). This corridor transects historic mountain communities such as Georgetown-Silver Plume, which, as a National Historic Landmark, includes 384 historic properties and the Georgetown Loop railroad grade that runs between the two towns and was considered an engineering marvel of the late 19th century.

I-70 also goes through the Idaho Springs Commercial District and Hot Springs Historic District in Glenwood Springs, which was developed between the 1880s and early 1900s as a resort. In addition, the I-70 corridor mountain communities in Clear Creek County are historically significant for their association with the development of the mining industry in Colorado.

Colorado Preservation, Inc., identified the historic communities in the I-70/Clear Creek Expansion

Corridor as one of “Colorado’s Most Endangered Places for 2005.” There are many consulting parties involved in this issue, because preservation interests associated with the historic mountain communities are very concerned about the impacts of widening I-70.

## IOWA

**Project:** New Case: Conveyance of Cedar Rapids Old United States Courthouse

**Agency:** General Services Administration

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Federal Building and US Court House, Cedar Rapids  
(GSA)

The General Services Administration (GSA), the Iowa State Historic Preservation Officer (SHPO), and the city of Cedar Rapids have reached agreement to convey the historic Old United States Post Office to Cedar Rapids in exchange for city-owned property upon which a new courthouse will be constructed by GSA.

The Old Court House in Cedar Rapids is a Beaux-Arts style structure completed in 1933. It is listed on the National Register of Historic Places as possessing state and local significance and contributing to the May Island Historic District.

Due to financial constraints in the State of Iowa, the SHPO can no longer accept historic covenants. Through negotiation, Cedar Rapids elected to provide funding to the SHPO to enforce the covenant on the Old Court House in perpetuity. This successful

agreement will assist the SHPO in negotiating other agreements with Federal agencies and inspire creative approaches to securing covenant funding. GSA also intends to use this as a model for similar funding mechanisms in other states with fiscal constraints.

The Old Court House is an important resource to the city. Following signing of the Memorandum of Agreement (MOA), signatories will oversee transfer and development of the Old Court House by the city of Cedar Rapids. As part of the agreement, historic car barns located on the site where the new Court House will be built are to be documented, and building materials will be salvaged for interpretation at the local historical society.

This case is significant for the models it offers to similar circumstances around the nation. It represents successful property disposal and subsequent reutilization of Federal historic resources by local government while simultaneously benefiting Federal government by acquisition of appropriate property needed for governmental operations.

## UTAH

**Project:** Termination of Consultation on Skull Valley Nuclear Fuel Storage Facility Project

**Agency:** U.S. Nuclear Regulatory Commission

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On November 25, 2005, the U.S. Nuclear Regulatory Commission (NRC) terminated consultation under Section 106 of the National Historic Preservation Act. The controversial nature of the proposed nuclear fuel storage facility and a moratorium on land management planning made it impossible for NRC to complete the normal process of executing a Memorandum of Agreement (MOA) for the undertaking prior to issuing its final decision on a license for the facility.

On January 9, 2006, Chairman John L. Nau, III, transmitted formal ACHP comments to the Chairman of the NRC, agreeing with the agency's proposal to condition its license on mitigation measures contained in a draft MOA. On February 10, 2006, NRC responded to ACHP's comments, confirming its intent to condition the license as earlier proposed, and stating that it intends to issue a license.



Skull Valley facility  
(NRC)

The NRC is considering an application from Private Fuel Storage (PFS) to construct and operate an independent spent nuclear fuel storage facility on the reservation of the Skull Valley Band of Goshute Indians in Tooele County, Utah. Spent nuclear fuel would be transported by rail from U.S. commercial reactor sites to Skull Valley. To connect existing rail lines to the Skull Valley site, PFS plans to build and operate a 32-mile rail line from near Lowe, Utah, to the site on the Goshute reservation.

NRC proposed to condition the license for development of the nuclear fuel storage facility on implementing the measures in the Memorandum of Agreement (MOA) and draft Treatment Plan, whose provisions were generally agreeable to all but one involved party, and proposed measures for addressing any historic properties that might be discovered during construction. Upon terminating consultation, NRC requested Advisory Council on Historic Preservation (ACHP) comments on issues involved in the project. The ACHP responded by agreeing to NRC's course of action and recommending that the remaining three Federal agencies with Section 106 responsibilities continue to finalize and execute the MOA.

This effort began for the ACHP with its involvement in Section 106 consultations in December 2000. While NRC was the initial lead agency and ACHP was involved in the Section 106 consultations, three other Federal agencies are involved: The Bureau of Indian Affairs (BIA), Bureau of Land Management (BLM), and the Surface Transportation Board (STB). BLM later became the lead Federal agency because all potentially affected historic properties are located on BLM lands.

No historic properties were identified on the site of the proposed storage facility itself. However, eight historic properties are located within the area of potential effects (APE) of the proposed 32-mile



rail line. All eight are located on BLM land. All eight properties are linear features that would be crossed by the proposed rail line. The most significant adverse effect is destruction of a small portion of the Hastings Cutoff of the California Trail.

NRC identified 17 consulting parties for purposes of Section 106 consultation. These include all five Federal entities and the following:

- Utah State Historic Preservation Officer
- Skull Valley Band of Goshute Indians
- Private Fuel Storage, L.L.C.
- Confederated Tribes of the Goshute Reservation
- Tribal Council of the Te-Moak Western Shoshone Indians of Nevada
- Utah Historic Trails Consortium
- Ohngo Gaudadeh Devia
- National Park Service
- Long Distance Trails Association
- Paiute Indian Tribe of Utah
- Utah Chapter of the Lincoln Highway Association
- Utah Chapter of the Oregon-California Trail Association

Not all of these parties were involved in drafting the MOA. Because the project will not have an effect on any properties of religious and cultural significance to Tribes, only the Skull Valley Band of Goshute Indians (on whose reservation the storage facility would be located) participated in the MOA itself.

The NRC circulated the MOA most recently on May 26, 2005, but the Utah SHPO and the BLM were unable to sign the agreement for different reasons. The Utah Governor opposes the project and has appointed a special SHPO to represent state interests for this issue. The BLM states that it is prohibited from conducting land use planning in the Skull Valley area due to provisions of the National Defense Authorization Act. This led to termination of consultation and the request for ACHP comment.

In this unusual case, NRC had to terminate consultation despite the fact that the ACHP was in agreement with its proposed resolution. Without the BLM and SHPO agreeing to execute the MOA, the NRC's only alternative was to terminate consultation. In a letter dated January 9, 2006, the ACHP informed NRC that it agreed with the NRC's proposed course of action, which is to condition the license on completing a treatment plan for historic properties that will be affected by the proposed rail line; and to condition the

license on additional measures to address discovery of historic properties during construction.

In the February 10, 2006, letter from NRC Chairman Nils J. Diaz, the NRC notified the ACHP that the license it proposes to issue does not allow immediate construction. Rather, it requires the PFS to first arrange for adequate funding. PFS must also obtain approvals from the Bureau of Indian Affairs for construction of the proposed facility, and from BLM and STB for construction of the proposed rail line across BLM lands.

In December, 2005, Congress passed a bill declaring the area surrounding the proposed rail line a wilderness area (Section 383 of the recently enacted National Defense Authorization Act designates the Cedar Mountain Wilderness Area), which may make it more difficult for the BLM to approve a right-of-way for railway construction.

## VIRGINIA

**Project:** Update: Construction of the King William Reservoir, King William County

**Agency:** U.S. Army Corps of Engineers

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The U.S. Army Corps of Engineers issued a permit on November 16, 2005, for construction of the 1,500-acre King William Reservoir, located in central Virginia east of Richmond. The purpose of the reservoir on Cohoke Creek, a tributary of the Pamunkey River, is to ensure an adequate supply of drinking water for the Tidewater area well into the future.



King William Reservoir proposed site, Cohoke Creek  
(King William Reservoir Project)

The Advisory Council on Historic Preservation (ACHP) began consultation with the Corps of Engineers Norfolk District, the City of Newport News (which is the permit applicant), the Virginia State Historic Preservation Officer (SHPO), and other consulting parties in 1997. The Norfolk District initially denied the permit request in 1999, citing adverse effects on wetlands, on traditional cultural properties of the two tribes, and disputable figures of future water needs. In 2002 the North Atlantic Division of the Corps reversed the Norfolk District's denial, and after several years of additional study decided late in 2005 to issue the permit.

A Memorandum of Agreement was executed last year among the Corps, ACHP, the City, and the Virginia SHPO for this project, allowing the Corps to move forward in its review of the permit application. The basic premise for the Division reversing the District decision was its finding that there was a need for additional water resources in the area in the near future, and that the King William Reservoir was a viable alternative to meet this need.

While the permit has been issued, there remain an ongoing legal challenge to construction. In 2005 the Virginia Supreme Court ruled that a Newport News court had to consider claims by the Mattaponi Indian tribe that the proposed reservoir violates terms of a treaty dating to 1677. The Mattaponi claim that the treaty bars development for three miles around the tribe's reservation, and construction of the reservoir would encroach on the non-development zone.

## WYOMING

**Project:** New Case: Seismic Energy Resource Exploration in the Bridger-Teton National Forest

**Agency:** United States Forest Service

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Portable drill rig  
(USDA - Forest Service)

In July 2005, a Programmatic Agreement (PA) was signed that stipulates how seismic testing for gas and oil deposits will proceed with proper consideration for currently undetermined or unknown historic resources in the Bridger-Teton National Forest. This marks successful completion for the first of many expected similar agreements and creates a model for the Rocky Mountain Region and Intermountain Region of the United States Forest Service (USFS), as well as other entities, to emulate in similar circumstances. The Bureau of Land Management is also involved in the agreement.

The project activity involves recording reflected seismic energy from subterranean geological formations that is formatted into detailed three-dimensional images to discover gas and oil deposits. This is done by placement of explosives in a regular series of "shot holes" drilled for that purpose. The energy released by the explosions is captured by regularly placed "geophone receivers," specialized microphones that read the reflected energy waves bouncing back from underground features. The receivers arranged in regularly spaced "cable lines," which intersect the rows of shot holes. The receiver lines will be perpendicular to the shot hole lines.

The scope of the exploration is geographically large. There will be approximately 20,000 shot holes over the entire project area, and 1,100 miles of receiver line will link about 31,000 receiver stations. There will be 124 shot hole lines, spaced 700 feet apart, and along these lines explosives will be placed about every 233 feet. The receiver lines will be spaced 660 feet apart, with a receiver placed every 165 feet.

Several helicopter and equipment staging areas will be required. Locations have yet to be selected and analyzed. These staging areas provide for temporary placement of cable and geophone trailers, helicopter fuel storage, helicopter landing pads, and parking for crew transport vehicles.

Where terrain allows, buggy mounted drills will be used to drill shot holes. Where terrain does not allow buggy access, helicopter-deployed drill units will be used. ExxonMobil Oil Company estimates that 30 percent of shot holes will be drilled by buggy and 70 percent by helicopter units.

The PA stipulates that the USFS ensures the survey and evaluation of historic properties be completed before testing commences. The area proposed for testing has not been previously surveyed. The agreement outlines survey methodology for identifying historic resources, and requires consultation with the Wyoming State Historic Preservation Officer (SHPO) and affected Tribes. Tribes have been asked to provide information on sacred sites and traditional cultural properties and/or sacred sites. Additionally, it is known that a spur of the Oregon Trail known as the Lander Cut-off is located within the proposed project area.



*Preserving America's Heritage*

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