

A black and white photograph of a classical building facade. The image is split into two vertical panels. The left panel shows two tall, fluted columns with Corinthian capitals, supporting a heavy entablature. The right panel shows a window with a decorative frame and a smaller window above it. The overall style is neoclassical or classical.

ADVISORY COUNCIL ON HISTORIC PRESERVATION
REPORT TO THE PRESIDENT AND CONGRESS

1998 - 1999

The President
The President of the Senate
The Speaker of the House of Representatives

Dear Sirs:

The Advisory Council on Historic Preservation herewith transmits its annual report for Fiscal Years 1998 and 1999 in accordance with Section 202(b) of the National Historic Preservation Act of 1966, Public Law 89-665.

Respectfully submitted,



Cathryn Buford Slater
Chairman

Washington, DC
October 2000



The Advisory Council on Historic Preservation is an independent Federal agency established by the National Historic Preservation Act of 1966, as amended (16 U.S.C. 470f). The Council advises the President and Congress on historic preservation matters, administers the public review and consultation process for Federal undertakings established by Section 106 of NHPA, and works to improve Federal policies, programs, planning, and decisions when they affect the Nation's historic and cultural resources.

Cathryn Buford Slater of Little Rock, Arkansas, is Chairman of the 20-member Council, which is served by a small professional staff headed by Executive Director John M. Fowler. The Council maintains offices in Washington, DC, and Lakewood, Colorado. For more information about the Council, contact the Advisory Council on Historic Preservation, 1100 Pennsylvania Avenue, NW, Suite 809, Washington, DC 20004. (202) 606-8503. www.achp.gov.

ADVISORY COUNCIL ON HISTORIC PRESERVATION
REPORT TO THE PRESIDENT AND CONGRESS

1998 - 1999

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On the threshold of a new century and new millennium, many of us find ourselves taking stock of what we have accomplished and what remains to be done. This is the case at the Advisory Council on Historic Preservation.



Thanks to the internal reorganization we undertook in 1996-1997, we now enjoy a stronger and more tightly focused membership and a staff better able to meet the needs of the national preservation community. We boast an active policy agenda, an improved Section 106 review process, and enhanced outreach to our customers, particularly

Indian tribes and Native Hawaiian organization. Electronic communication is an extension of that outreach, and our Web site wins regular plaudits for its content and ease of use.

The report that follows details two years rich in achievement. During 1998 and 1999, the membership met six times to explore a range of preservation issues, from the impact of suburban sprawl on communities nationwide, to Army and Navy preservation of the vast inventory of historic properties under their jurisdiction. In Miami, Florida, we considered challenges associated with preserving the recent past, while in Washington, DC, we examined the General Services Administration's efforts to keep historic Federal buildings in active use. We made recommendations to the President, arguing against a major highway construction project in Pasadena, California. We suggested to the Secretary of Energy ways to protect Manhattan Project and Cold War facilities under his jurisdiction. We also met with Indian tribes and Native Hawaiian organizations to encourage their full participation in the Section 106 review process.

Improving Federal stewardship of the Nation's historic and cultural patrimony percolated throughout the Council's work, as the following pages make clear. In the policy arena, we advocated increasing the Historic Preservation Fund; supported the protection of historic lighthouses; affirmed the need for appropriate environmental review in decisions about the construction of cellular towers; and helped secure protection for Revolutionary War battlefields in Pennsylvania.

Our major program improvement initiatives had a similar emphasis. During this reporting period, the Council made significant headway in building better relationships with the hydroelectric power and natural gas industries. We addressed wildfire management with the Departments of Agriculture and Interior and streamlined the environmental review process for Federal Highway Administration highway and transit projects. We developed an agreement with the Navy that takes into account the costs of maintaining historic housing, and moved closer with the Army to formalizing alternate procedures to our regulations.

This focus on Federal stewardship crystallized with the inception of the Council's Millennium Initiative: a special report to the President and Congress with recommendations to improve Federal stewardship of historic properties. Conceived to complement the White House Millennium Program's "Save America's Treasures," our study, to be published in the fall of 2000, will evaluate how Federal agencies care for their historic properties. The study will examine examples of successful stewardship undertaken by particular agencies; challenges faced by the Federal Government in managing those assets; and ways in which funding, policy, programs, and performance could be improved.

Preliminary findings of the report recognize that protection and enhancement of the Nation's historic and cultural patrimony need to be dealt with as a national priority, and the Federal Government must demonstrate leadership for this to happen. Creative solutions to funding, operation, maintenance, and management must be developed and implemented. It is in the public interest, and it is the right thing to do for ourselves and the generations to come.

Reorganization complete, new regulations in place, and a special report to the President and Congress in progress, the Council enters the new millennium with renewed vigor. I invite you to peruse *Report 1998-1999* and judge for yourself.

Cathryn Buford Slater
Chairman

ABOUT THE ADVISORY COUNCIL ON HISTORIC PRESERVATION

The Advisory Council on Historic Preservation protects historic properties. We are the sole Federal entity with legal responsibility to ensure that historic preservation concerns receive serious consideration when Federal actions are planned and executed. We accomplish this through the Federal Government's protective process for historic properties, commonly known as "Section 106 review," which we administer at the national level in close cooperation with States and Indian tribes.

The Section 106 review process guarantees the public an opportunity to participate in Federal decisions that might affect historic properties. Implemented by the Council's regulations, 36 CFR Part 800, "Protection of Historic Properties," Section 106 seeks to balance historic preservation values with Federal project requirements in the public interest.

WHO WE ARE

The Council's membership embraces a broad spectrum of the national historic preservation constituency. The President of the United States appoints 15 of our 20 members: four private citizens, including the Chairman; four historic preservation experts; a member of an Indian tribe or a Native Hawaiian organization; a governor; a mayor; and the heads of four Federal agencies. The Secretaries of the Interior and Agriculture, the Architect of the Capitol, the chairman of the National Trust for Historic Preservation, and the president of the National Conference of State Historic Preservation Officers, who are designated by law, round out the Council's membership. (A list of 1998-1999 members appears as Appendix C.) Members meet regularly to discuss the relationship between Federal activities and historic preservation. A small professional staff in Washington, DC, and Denver, Colorado, conducts daily business.

OUR MISSION

The Council's mission is to promote the protection and enhancement of the Nation's historic resources, and we pursue our goal in a variety of ways. We recommend to the President and Congress measures to protect the Nation's heritage. We consult with Federal agencies to ensure that their policies and

operating procedures adequately consider historic preservation laws and policies. We review individual Federal actions when they 1) substantially affect important historic properties; 2) involve questions of policy or interpretation; 3) have the potential for presenting procedural problems; or 4) identify issues of concern to Indian tribes or Native Hawaiian organizations. We negotiate legal agreements to attain appropriate treatment of historic properties. Finally, we provide training, guidance, and public information to help stakeholders participate in Section 106 review.

REPORT TO THE PRESIDENT AND CONGRESS OF THE UNITED STATES, 1998-1999

This report to the President and Congress of the United States is prepared under the authority of the National Historic Preservation Act of 1966 (NHPA), which established the Council and the Section 106 review process and other components of the national historic preservation program. This report surveys 1998-1999 achievements in the context of the Council's membership meetings and provides an overview of recent activities in the areas of preservation policy; Federal historic preservation program improvement; protection of historic properties; and public outreach. *Report 1998-1999* covers Fiscal Years 1998 and 1999, which began October 1, 1997, and ended September 30, 1999. It is available in print and as an electronic document published at the Council's Web site, www.achp.gov.

1998-1999 IN REVIEW

Putting the Council's new strategic plan into action was a primary task for 1998 and 1999. Adopted in Fiscal Year 1997 to meet the requirements of the Government Performance and Results Act, the plan set long-range and six-year strategic goals in each of the Council's major program areas: Coordinating Preservation Policy; Improving Federal Historic Preservation; Protecting Historic Properties; and Educating the Public.

Under the strategic plan, the Council encourages public policies that promote the preservation, enhancement, and use of historic properties and support such activities carried out by Federal, State, local, and tribal governments and the private sector. We foster Federal agency programs that meet the requirements of Section 110 of NHPA, which encourages Federal stewardship of historic properties, and strive for outcomes in Federal preservation activities that advance NHPA's purpose. Finally, we advise the public and their governmental representatives on the intrinsic value of historic preservation.

Galvanized by a newly articulated mission, the Council used the plan as the blueprint to build a more efficient and effective agency. A summary of the strategic plan is available at www.achp.gov/mission.html.

In 1998 and 1999, we followed through on our commitment to improving the way the Council conducted business. Completing our internal reorganization, initiated in 1996 in response to recommendations issued by the Task Force on the Future of the Advisory Council on Historic Preservation, we moved the position of Native American Coordinator to Washington, DC, and merged communications, publications, and legislative functions into a single office of Government Relations and Communications. We streamlined management and empowered staff in the Office of Planning and Review to engage in more independent decision-making, initiated long-term planning for the annual cycle of Council meetings, and took the unprecedented step of referring to the President for consideration a major Section 106 case, California's Route 710 Freeway (Figure 1, page 3).

Against this backdrop we continued our daily activities. In 1998 and 1999, the Council:

- reviewed 4,787 Federal undertakings under Section 106;
- executed a total of 1,183 Memoranda of Agreement;
- delivered to Congress *Alternatives for Implementing Section 106 of NHPA: An Assessment*, a report requested by the House and Senate Committees on Appropriations;
- began development of a special report on Federal stewardship of historic properties in conjunction with the White House Millennium Program; and
- debuted discussion forum on our Web site to gather information for that report and related purposes.

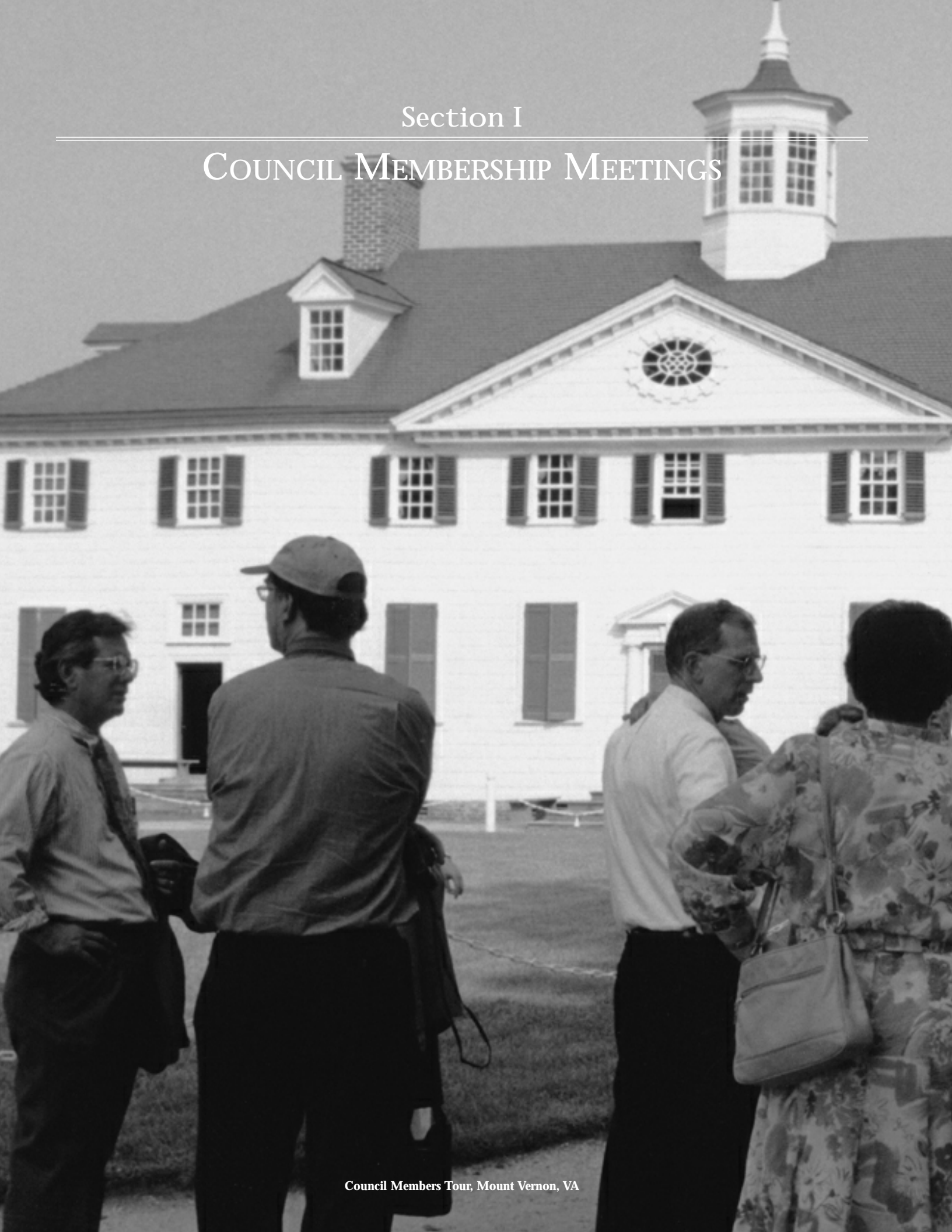
The capstone of our reporting period came on June 17, 1999, when our revised regulations took effect. This brought to closure a six-year effort to craft a smarter, more responsive Section 106 review process.

These activities were pursued with a membership of 20, a staff of 34, and an operating budget of approximately \$2.75 million. They took place under the leadership of Cathryn Buford Slater of Little Rock, Arkansas, who was reappointed as Council Chairman in 1996. Two new members participated in these endeavors: citizen member Eugene A. Ludwig, New York, New York, and Governor Angus S. King, Jr., Brunswick, Maine. Biographical information about these and other Council members is available at www.achp.gov/members.html.

Coordinating policy needs, encouraging responsible Federal agency project planning and historic property management, managing the array of Section 106 cases, and educating and advising organizations and individuals about their historic preservation rights and responsibilities: these were but a few of the activities the Council undertook in 1998 and 1999 to meet our statutory obligations. This report summarizes efforts toward that end.

Section I

COUNCIL MEMBERSHIP MEETINGS



Improving the national historic preservation program with special emphasis on Federal stewardship of the Nation's historic properties was our focus for 1998 and 1999. On the eve of a new century and a new millennium, it seemed only prudent to assess the Federal Government's historic preservation legacy, and the Council's leadership role within the Federal preservation community uniquely suited us for the task.

Accordingly, membership meetings during this period sought answers to how the Federal Government can better preserve, protect, and maintain historic properties under its control and how Federal agencies can be better partners and facilitators in historic preservation efforts. With the Administration's call to Federal agencies to participate in the White House Millennium Program, that question took on added resonance, ultimately catalyzing the development of a special report to the President and Congress. The evolution of the Council's millennium initiative from meeting focus to high-level policy recommendations on Federal stewardship is described below. For more information about the White House Millennium Program, see page 4.

Council members met six times during the reporting period, choosing a variety of locales to consider different issues related to the millennium initiative.

FALL 1997, WASHINGTON, DC: REGULATORY REVISION

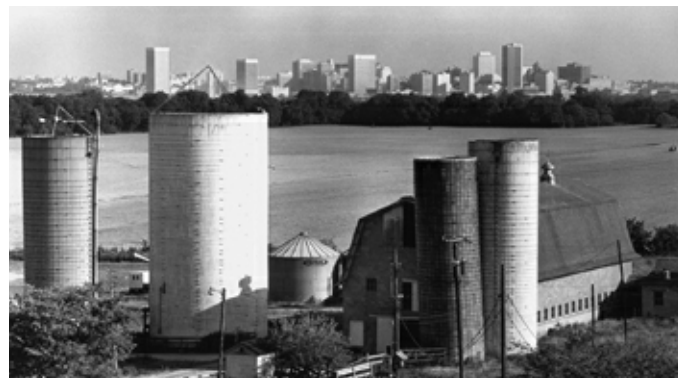
The revision of the regulations that implement Section 106 of NHPA was the major topic of the Council's 1997 fall business meeting. Held October 24 at the Council's Washington, DC, headquarters, the meeting focused on formally adopting regulations to submit to the Office of Management and Budget (OMB) for interagency review. The fall meeting also gave members a chance to consider modifications the Regulations Task Force put forth to address recommendations received from Indian tribes. At issue was the role of Indian tribes and Native Hawaiian organizations in Section 106 consultation, particularly when undertakings affected properties of religious or cultural significance located on or off tribal lands. Changes in the Section 106 review process resulting from regulatory revisions are discussed on pages 31-33.

The Regulations Task Force, chaired by Council Chairman Slater, included Native Hawaiian member Raynard C. Soon, Honolulu, Hawaii; the Secretary of

Transportation, represented by Joseph F. Canny; the National Park Service, represented by Katherine H. Stevenson; the National Conference of State Historic Preservation Officers, represented by Judith E. Bittner; and the National Trust for Historic Preservation, represented by Richard Moe. The draft regulation was submitted to OMB on November 27, 1997.

Suburban Sprawl

A major challenge facing public policy now and into the new millennium, the growing problem of suburban sprawl received substantial attention. As many incoming Section 106 cases illustrate, the quality of life in the Nation's communities is being placed under increasing stress by development pressures, and historic properties, a key component of a community's character, are increasingly at risk.



As suburbanization accelerates, historic properties, a key component in defining community character, are increasingly at risk. Here, historic Tree Hill Farm stands uneasy watch over Richmond, Virginia.

In a followup report to the membership, Council staff explained that the Section 106 review process can only do so much to correct problems associated with sprawl. In many cases, development is privately financed, and the Federal role is limited to a permit or approval. These types of cases present entirely different demands than those where the Federal role is more substantial and direct. Frequently, the review process is initiated long after the project has gathered support from the local government, which through its zoning and land-use

authorities plays the most influential governmental role in directing growth. Informed local decision-making is the key ingredient in smart growth, but there is an important Federal role, and Section 106 review—if carried out thoughtfully and strategically—can help foster better decisions by Federal agencies.

**SPRING 1998, MIAMI, FLORIDA:
PRESERVING THE RECENT PAST**

The spring meeting in Miami, Florida, March 12-13, capitalized on Miami’s identity as a 20th-century city. Against that backdrop, Council members observed some of the challenges Federal historic preservation will face in the future. These include shifting regional demographic patterns, increasing commercial and public interest in reuse of previously developed residential land and brownfields, and continuing change in the employment market within a global economy. In the context of this culturally diverse city, members confronted the implications of increasing community disassociation from the physical remnants of the past. They toured Miami Edison Middle School, a facility that serves an immigrant community with which it has no historical affiliation, and the Tower Theater in Little Havana, an example of how the historic meaning and value of local landmarks can be preserved when historic neighborhood populations are displaced. Traveling through the Art Deco District in



Miami Edison Middle School in Florida, a National Register property, serves an immigrant populations with no historical ties to the facility.

Miami Beach, members contemplated how to deal with the preservation of the recent past and how to ensure that the architectural and design value of such resources is not overlooked or dismissed because they are not “old.”

California Route 710

Future-oriented issues percolated through the next day’s business meeting, held at the David W. Dyer Federal Building and U.S. Courthouse. Members first worked on developing the Council’s formal response to the Federal Highway Administration’s (FHWA) proposed California Route 710 Freeway gap-closure project, including the possible referral of the case to

the Council on Environmental Quality (CEQ). One of the most controversial Section 106 cases in Council history, the project involves the construction of 4.5 miles of freeway to connect the Long Beach Freeway with the Pasadena Freeway, thus completing the Los Angeles Freeway system. The project would affect six major historic districts.

The Council’s primary concern was the magnitude of the project’s impact on the historic properties and, ever since Section 106 review was initiated in the early 1970s, we have used every means at our disposal to obtain further FHWA consideration of those concerns: Chairman’s letter (1983); panel report (1984); and formal comments to the Secretary of Transportation following a public hearing (1989). In those comments, the Council expressed the belief that the impacts on historic properties far outweighed the projected benefits of the completed freeway.



The proposed 4.5-mile extension of California’s Route 710 would affect six major historic districts in Pasadena containing about 200 historic properties such as this one.

In 1993, the Council determined that the only avenue remaining to impress historic preservation concerns on FHWA was to refer the matter to CEQ, whose referral process provides a means of resolving interagency disagreement concerning proposed major Federal actions that might cause unsatisfactory environmental effects. In response to this action, CEQ referred the project back to FHWA, urging it to work with the Council and other parties to identify and inventory historic properties in the project area and develop a “low build” alternative that was technically feasible.

FHWA completed those tasks in 1997 and put forth another proposal identified as the “Depressed Meridian Variation Alternative Reduced with Shift,” which provided for depressing 85 percent of the freeway and relocating dozens of historic structures above six cut-and-cover tunnels. While the revised proposal significantly reduced the amount of direct and immediate impacts on historic properties, preservation concerns remained. Specifically, the proposal did not

FIGURE 1. CHAIRMAN SLATER REFERS CALIFORNIA FREEWAY CASE TO PRESIDENT CLINTON

Calling the proposed extension of California State Route 710 “one of the most important historic preservation cases ever to come before the Council,” on March 20, 1998, Council Chairman Cathryn Slater asked President Clinton to carefully consider the project’s devastating effects on historic properties. The project, which involves construction of 4.5 miles of freeway to connect the Long Beach Freeway with the Pasadena Freeway and close a gap in the Los Angeles Freeway system, would impact six major historic districts, including Markham Place, Pasadena Avenue, Prospect Circle, South of Mission, Buena Vista, and the Shoreline Villa Tract. Together, these districts contain 188 contributing historic properties, in addition to 12 structures individually listed in the National Register of Historic Places.

In making the request to the President—the first in the Council’s 32-year history—Chairman Slater conveyed comments on the project adopted by the membership at its March 13, 1998, business meeting in Miami, Florida. Those comments, addressed to Rodney Slater, Secretary of Transportation, acknowledged FHWA’s efforts to lessen the freeway gap closure’s harmful effects but concluded that such damage to historic resources could not be adequately mitigated; the loss of so many historic resources was “unacceptable.”

“Insertion of a depressed freeway, removal of mature vegetation, relocation of houses, severing of through streets, construction of sound walls, and the introduction of noise and visual intrusions, will all irreparably alter and degrade these communities,” the Council concluded. The comments to the Secretary of Transportation represented the fourth time the Council had formally spoken out against the project since Section 106 review was initiated in 1983.

The March 1998 review focused on FHWA’s most recent proposal, the “Depressed Meridian Variation Alternative Reduced with Shift,” which provided for depressing 85 percent of the freeway and relocating dozens of historic structures above six “cut-and-cover” tunnels. The Council expressed skepticism regarding the likely success of such an approach, citing concern for the loss of critical landscape features and other character-defining attributes, in addition to the difficulty of restoring the integrity of the original historic districts.

In concluding its comments to Secretary Slater, the Council recommended that the project not be approved unless a different alternative could be found—one that avoids such massive destruction of historic properties. Toward that end, the Council urged FHWA to undertake further development and independent testing of the “low-build” alternative.

President Clinton responded to Chairman Slater’s request on April 8, 1998, directing the Secretary of Transportation to give serious consideration to the Council’s recommendations in reaching his final decision about the 710 project. Five days later, the Chairman heard from the Administrator of FHWA that the local and regional benefits of the 710 project outweighed adverse impacts to historic properties and mature vegetation. FHWA would move forward with the new construction.

The City of Pasadena subsequently petitioned for a preliminary injunction against the proposed 710 freeway, the status of which is summarized on page 21.

address the project's effects on the long-term viability and integrity of the affected historic districts. The relocation of historic structures, street closings, loss of mature trees and vegetation, and protracted construction would diminish the significant qualities of an entire historic community.

After a report from a panel of members who had toured the proposed route and held a public meeting in Pasadena in early February 1998 and a presentation by FHWA to balance the perspective, the Council decided to issue strong comments against the project to Secretary of Transportation Rodney Slater—the fourth time over the past 15 years that the Council has taken such a position. In a related action, members voted not to renew a previous referral of the project to CEQ and, instead, expressed concerns directly to President Clinton (see page 3).

The Council's Contribution to the White House Millennium Program

In response to the Administration's invitation to Federal agencies to participate in the White House Millennium Program (see sidebar), in Miami we considered ways in which Council expertise could



Architect Friedrich St. Florian presents a model of the proposed World War II Memorial at the Council's summer 1998 meeting in Alexandria, Virginia. Preservation experts Arthur Q. Davis, FAIA, and Bruce D. Judd, FAIA, represented the Council in subsequent discussions.

be best utilized to advance historic preservation in the 21st century. Since heritage conservation lay at the heart of the Administration's initiative, the Council looked for an opportunity to tie that initiative explicitly to the national historic preservation program. Our current focus on Federal program improvement suggested an obvious direction: an examination of the reasons behind prominent preservation successes and the causes of failure, culminating in specific recommendations to improve the Federal Government's participation and investment in historic preservation into the next century.

THE WHITE HOUSE MILLENNIUM PROGRAM

Led by the First Lady, the White House Millennium Program is a multi-year initiative to mark the end of the 20th century and the beginning of the new millennium. The program will celebrate the accomplishments of this American century, recognize and initiate projects, and engage every sector of society in conveying our rich heritage to future generations. Taking "Honor the Past—Imagine the Future" as its overall theme, the program calls upon States, communities, nonprofit organizations, Federal agencies, and all citizens to participate in meaningful activities that strengthen our democracy, improve communities, and give lasting gifts to the future.

One of the best ways to imagine the future is to preserve what we value of our past, and the "Save America's Treasures" program, one aspect of the White House initiative, helped make that possible on a national scale. A public-private partnership dedicated to the celebration and preservation of our historic and cultural legacy, in 1999 Save America's Treasures made available some \$30 million in Federal matching grants to address the most urgent preservation needs of some of our Nation's most significant historic sites and collections. Among them were Manhattan Project buildings at Los Alamos National Laboratory in New Mexico; Cliff Dwellings at Mesa Verde National Park in Colorado; and Gettysburg National Military Park in Pennsylvania.

Council Chairman Cathryn Slater and historic preservation expert member Bruce D. Judd, FAIA, represented the Council in the Save America's Treasures program at the leadership level. Executive Director John M. Fowler and Mr. Judd served as jurors for the Federal preservation grants.

For maximum impact, members decided that those recommendations should be targeted to the President and Congress. They voted to seek additional funding from the Office of Management and Budget to proceed with the study.

**SUMMER 1998, ALEXANDRIA, VIRGINIA:
REGULATIONS IMPLEMENTATION PLAN**

How best to implement our new regulations upon OMB approval was the subject of discussion at the Council's summer meeting in Alexandria, Virginia, June 25-26, 1998. Members reviewed a proposed regulations implementation plan that focused on three actions areas: distribution, training, and guidance. The Council's Web site would be the centerpiece of this important initiative, although printed informational materials would be made available to those without Internet access.

The plan provided for a basic package of information to be posted on the Web site simultaneous with publication of the final rule. Printed materials would then be distributed to a range of groups. With initial notification in place, emphasis would shift toward enhancing the Web site with an interactive flow chart and a dynamic question and answer page. The former would permit users to walk through the revised Section 106 process by responding to a series of questions, while the latter would enable users to ask questions about the review process and receive answers tailored to their needs.

Educational Outreach

Targeted educational efforts figured prominently in the implementation plan. People familiar with Section 106 review, as well as people new to the process, would need to learn how to use our revised regulations; so would specific user groups such as Indian tribes and Native Hawaiian organizations. At the June meeting, the Council proposed to hold ten or more free public transitional briefings across the country for experienced users and revise the introductory training course, "Introduction to Federal Projects and Historic Preservation Law," to reflect the new regulations. The course, offered in cooperation with the University of Nevada-Reno, would be held in locations nationwide.

Over the long term, users would need continuing guidance and policy interpretations regarding the

new regulations, and the June plan identified four priorities: a citizen's guide to the Section 106 review process and guidance on the treatment of archeological properties, tribal involvement in Section 106, and the coordination of Section 106 with the environmental reviews conducted under the National Environmental Policy Act (NEPA).

New Regulations Bring New Opportunities

New regulations provide the Council with an opportunity to redefine our role in the Section 106 review process, and at the June meeting members set forth some guidelines. Since we will no longer review routine cases but retain the authority to enter into the process when it is necessary, it seemed only logical to develop criteria to guide Council involvement. The Council must ask first if there has been a good faith effort in consultation and, if so, have the agency and the SHPO reached an impasse? Will Council participation help promote historic values? Is the affected property listed on a national or State endangered list? Does the case advance program or policy initiatives?

Even if the particular case meets these criteria; however, the Council may decide not to participate. Circumstances that might preclude our involvement include projects that have been already initiated and thus make Council participation unproductive. Public concerns might be unrelated to historic preservation, or the case might not fit into the existing Council work plan.

Criteria for Council involvement are noted on page 32.

Defining the Council's Millennium Contribution

We devoted a special session to better defining the Council's contribution to the White House Millennium Program. Held at the Mount Vernon conference center June 25, the session gave members an opportunity to discuss possible activities.

After considerable discussion, members endorsed developing a printed report containing policy recommendations to the President and Congress. Although the subject remained unspecified, they suggested that the report be built



A tour of Mt. Vernon, the Virginia home of George Washington, capped the Council's special session on defining its millennium contribution.

around current issues and themes in preservation that are likely to persist into the 21st century. The scope of the report was contingent upon receipt of additional funding through the Council's annual appropriation.

A members task force was appointed to direct the effort and investigate possible topics for the report. Task force members included historic preservation experts James K. Huhta, Ph.D., Murfreesboro, Tennessee; chairman, Arva Moore Parks McCabe, Miami, Florida; and Bruce D. Judd, FAIA, San Francisco, California. The Environmental Protection Agency, represented by Richard E. Sanderson, and the National Trust for Historic Preservation, represented by Peter Brink, completed the task force.

FALL 1998, SANTA FE, NEW MEXICO: FEDERAL STEWARDSHIP OF HISTORIC PROPERTIES

Federal stewardship of historic properties came to the fore at the 1998 fall meeting in Santa Fe, New Mexico. Over the course of November 5-6, Council members met with the Governor of the Pueblo of Jemez, Tribal Council members, and staff to share information about the pueblo's state-of-the-art cultural resource management program as a background for a general discussion of better ways to involve Indian tribes in consultation and Federal project planning. The Council also considered preservation issues within the Department of Energy (DOE) and developed recommendations to the Secretary of Energy and the Director of Los Alamos National Laboratory (see Figure 2, page 7); explored a possible Presidential directive on Federal stewardship; and decided to narrow the focus of the report proposed at the spring meeting to Federal stewardship of historic properties as a complement to the White House Millennium Program.

Members also voted to nominate the Civilian Conservation Corps for a Presidential Millennium Award for design excellence in architecture and engineering (see Figure 3, page 9).

DOE Preservation Challenges

DOE faces a tight squeeze when it comes to funding historic preservation, agency officials told the Council. Unless historic preservation activities are specifically included in Federal budgets annually, in

its view finding money for preservation activities is extremely difficult. Over the past five years, DOE has undergone a strategic alignment that emphasizes core missions such as defense programs and environmental restoration at the expense of ancillary activities. In this context, historic preservation threatens to divert resources and may even conflict with existing missions.

There is also the problem of multiple uses of properties. Some have been used for different purposes over the years. Particularly at DOE's scientific laboratories, continuous additions and modifications to accommodate changing research needs have significantly changed the original structures. Given these changes, DOE asked what historic value could still be ascribed to these facilities.

Mothballing issues arise when buildings are placed in the "surveillance and maintenance" mode and cleaned of any contents that could present a long-term hazard. After decontamination, such buildings are generally boarded up and left to decay, or are abandoned in place. Under these circumstances, some extraordinary equipment has been lost because it once contained a substance considered hazardous, despite the fact that the equipment posed no risk to the public. Council members grappled with how these kinds of artifacts should be preserved for future generations in a cost-effective way.

This is especially important when it comes to DOE's Manhattan Project and Cold War-era properties. Because of the nature of the nuclear weapons production process, most of these projects are contaminated and some have been dismissed as "too contaminated." DOE needs some commonsense building restoration codes, so it can allow access to its historic properties without having to spend millions in restoration costs, if contamination is contained and holds no reasonable risk to the public.

Neither does any incentive exist for discriminating among DOE properties to identify those that are historically important and should be preserved. Currently, DOE contractors receive award fees for each building they take down. A bonus for leaving buildings with historic value standing and finding alternative uses for them should be considered. DOE's lack of partnerships with other Federal agencies, State and local communities, and academic institutions was also cited as an impediment.

FIGURE 2. PRESERVATION OF MANHATTAN PROJECT AND COLD WAR HISTORIC PROPERTIES, LOS ALAMOS NATIONAL LABORATORY, LOS ALAMOS, NM

In conjunction with the Council's 1998 fall business meeting in Santa Fe, New Mexico, members toured Los Alamos National Laboratory, a Department of Energy property near Los Alamos, New Mexico, associated with the production of atomic weaponry. There they gained an opportunity to observe firsthand the preservation challenges associated with one type of historic property—historically significant scientific and technological facilities.

Historically significant scientific and technological facilities present unique preservation challenges. Defined as properties that meet the criteria for inclusion in the National Register for the contributions they made or the role they played in the development and achievements of American science, technology, and industry, such properties may include the equipment itself or the facility where it was built or used. In the case of properties associated with the Manhattan Project and the Cold War, such as Los Alamos National Laboratory, the development, research, and testing of weaponry required a high degree of security and use of volatile and radioactive materials.

Many of the buildings, equipment, and processes used to develop such weapons remain classified, and parts of some sites are contaminated; concerns about security and contamination frequently circumscribe the range of preservation options available when the historic significance of such properties is being evaluated or when plans are made to remove or modify them. An additional complication is the belief among many scientists and property managers that historic designation will turn their laboratories into museums, halting development or modification of laboratory equipment.

Many structures and facilities at Los Alamos are already part of the Los Alamos Laboratory National Historic Landmark; others have been determined eligible for listing in the National Register. As part of the visit, Council members toured some of the properties, including the "V Site," the wooden buildings where scientists worked on the Trinity device; the Omega water boiler reactor building; and the concrete bowl designed to recover plutonium dispersed during atomic bomb tests. At the conclusion of the tour, members met in historic Fuller Lodge, the original dining hall and social center for Manhattan Project personnel, to hear the Department of Energy's perspective on site management and discuss ways to meet preservation challenges and make the most of these exceptional resources.

In examining available options for site stewardship that would balance the unique character of these sites with the need for public access, preservation, and interpretation, the Council considered such issues as:

- How can historic significance be conveyed to the general public when many facilities are contaminated or inaccessible to visitors?
- How can historic values be protected in light of budgetary pressures on DOE to reduce costs at facilities?
- How can DOE's most significant properties be identified and their preservation planned for?
- What kinds of treatments could be utilized to better inform the public about DOE's history and the history of atomic research?

The tour and a subsequent briefing informed a series of recommendations the Council submitted to the Secretary of Energy on November 18, 1998. In a letter from Chairman Slater, the Council proposed the development of a Council-DOE partnership to better educate departmental staff; streamline internal preservation procedures, particularly when historic properties are in secured areas and/or must be decontaminated; develop guidance on alternatives for properties scheduled for demolition, including increasing the use of museums and other public outreach mechanisms; and help make the application of environmental standards sensitive to historic preservation concerns.

As a direct result of the Council's initiative, the Department of Energy made a firm financial commitment to stabilize the V site.

At the time of the fall meeting, the Department of Energy had taken action to improve stewardship. On October 23, 1998, Secretary of Energy Bill Richardson established an agency-wide “corporate board” on historic preservation to help meet NHPA requirements more effectively. The board was also charged with making recommendations as to how best to preserve DOE’s history, both in writing and through the stewardship of buildings and other historic properties and equipment, and with reviewing related resource requirements and potential new funding needs. In Santa Fe, the Council commended this effort and offered to assist DOE with special training and guidance.

We also noted our past work on many of these issues. A special report was prepared at the request of Congress in 1990. *Balancing Historic Preservation Needs with the Operation of Highly Technical and Scientific Facilities* suggested answers to some of DOE’s questions about meeting its responsibilities.

Presidential Memorandum

DOE’s concerns, as well as its responsive initiative, underscored the important contribution Federal agencies can make toward preserving our heritage through responsible stewardship. Members discussed ways to promote a similar response from other agencies with historic properties under their jurisdiction. At Santa Fe, members voted to explore development of a Presidential Memorandum to establish

stewardship of Federal historic properties as policy and create a “Heritage Stewardship Working Group” to encourage effective conservation and management of Federal historic properties.

The working group would be comprised of policy-level representatives of Federal agencies that manage real property. It would be chaired by the Council’s Chairman and operated as a component of the Council. Representatives would

be designated by the appropriate Federal agency heads and be in a position to influence agency management policies and decisions. Representatives from the National Park Service’s Heritage Preservation Services and the National Center for Preservation Technology and Training would also be members.

The Council suggested that the working group be charged with disseminating information on successful management policies, techniques, and technologies for effective stewardship of historic properties; identifying challenges and impediments to proper stewardship and possible solutions; identifying Federal historic property stewardship need and opportunities for private-sector solutions through the development of new technologies and processes; and identifying special training for Federal historic property managers. The working group would report annually to the Council on an individual agency basis on noteworthy examples of successful stewardship and threats to historic properties under Federal jurisdiction.

Federal Stewardship Report

At the June 1998 meeting, members agreed that the Council’s principal contribution to the White House Millennium Program would be a special report to the President and Congress, and appointed a task force to direct the effort. In Santa Fe, the task force recommended that the report concentrate on Federal stewardship of historic properties. The Council had already accumulated significant information in this area through its business meeting focus and could leverage that into policy recommendations for the new millennium. Because members agreed that the public should be involved in helping to formulate those recommendations, they voted to use the Council Web site to engage a broad spectrum of the public with a relatively small expenditure of resources.



Established by President Franklin D. Roosevelt in 1933, the Civilian Conservation Corps helped institutionalize the rustic style in parks and forests across America through its architectural and engineering projects.



The Council held its fall 1998 business meeting at the National Park Service’s Southwest Regional Headquarters in Santa Fe, New Mexico. The circa 1939 building, built by the Civilian Conservation Corps, was the largest adobe office building in the Nation when it was completed.

FIGURE 3: COUNCIL NOMINATES CIVILIAN CONSERVATION CORPS FOR THE PRESIDENTIAL MILLENNIUM AWARD

The Council conducted its fall 1998 business meeting in the Southwest Regional Headquarters Building of the National Park Service in Santa Fe, New Mexico. This National Historic Landmark structure, the only Regional Office building designed and built specifically for the National Park Service and the largest adobe office building in the Nation when it was completed in 1939, was constructed by Civilian Conservation Corps (CCC) Company 833. In recognition of this signal example of Federal stewardship, in April 1999 the Council nominated the CCC for the Presidential Millennium Award for design excellence in architecture and engineering. The nomination was endorsed by the Department of Agriculture, the Department of the Army, the Department of Labor, and the National Park Service. Portions are excerpted below.

About the CCC

Forged in the crucible of the Great Depression, the Civilian Conservation Corps (1933-1942) stands as one of the most popular and successful programs of President Franklin D. Roosevelt's New Deal. A national experiment aimed at "saving" human and natural resources, during its nine-year history the CCC targeted that portion of the American population at greatest risk—unemployed, unmarried, generally unskilled young men between the ages of 18 and 25—for Emergency Conservation Work on public lands. In Federal and State forests and parks in 48 States and the territories of Alaska, Hawaii, Puerto Rico, and the Virgin Islands, Roosevelt's "tree army" fought fires, planted trees, laid foot trails, graded roads, constructed bridges, and built some 40,000 buildings for the National Park Service alone. With a base of more than 4,500 different camps scattered across the country, the CCC laid the foundation for America's public landscape.

Many CCC building and engineering projects meet the criteria for listing in the National Register and have been so designated. Our Millennium Award nomination sought a more public arena for celebrating the CCC's creation of a solid, esthetically pleasing infrastructure for our Nation's public spaces.

CCC Program

Although the CCC was relatively short-lived—it was terminated on the eve of World War II in the drive toward war preparedness—its impact on 20th-century American society was profound. Its social and economic benefits included putting 2.5 million youths to work in a rugged environment, teaching them self-respect along with highly marketable skills. The CCC afforded financial relief to countless families, as enrollees were required to send most of their stipend home; strengthened communities through the employment of individual local residents, both skilled and unskilled; and produced graduates who went on to become exemplary employees, especially in the building trades. Moreover, the CCC demonstrated its usefulness as a training and national preparedness program: Graduates made outstanding war production workers and excellent officer material.

CCC Achievements

The CCC's achievements are equally impressive. During its brief existence, the CCC salvaged millions of acres of endangered forest and crop lands; enrollees completed work estimated at a present and potential value of more than \$1.7 billion in just the areas of reforestation and soil erosion. Though the majority of CCC work centered on conservation of natural resources—project activities included watershed restoration, timberstand improvement, range betterment, fire protection and suppression, and forest disease and pest control—the CCC also made important contributions to 20th-century architecture and engineering. Outstanding for their naturalistic design and execution in addition to their enduring quality, CCC structures provide Americans with a tangible link to one of the most challenging periods in their collective history.

The centerpiece of the Web initiative would be a bulletin board to facilitate a conversation among our constituency. We would post topics on the bulletin board for public comment and interested members of the public would speak to the topics via the Web site. Discussion would begin when



CCC architecture drew on vernacular architectural motifs. Here, the design of the Museum and Visitor Center at Tumacacori National Monument in Arizona, a National Historic Landmark, conveys the architectural sense and history of the monument's prime resource: the Tumacacori Mission Complex.

other members of the public replied to the first set of responses. Participants would be encouraged to return to the discussion forum regularly to check out new developments.

For maximum impact, members targeted individuals with some familiarity with historic preservation issues as our audience and identified the topics "Responding to Future Preservation Challenges," "Caring for America's Past," and "Using the Past to Enrich Our Lives" as starting points. The Internet discussion was launched in February 1999.

WINTER 1999, HONOLULU, HAWAII: MILITARY STEWARDSHIP OF HISTORIC PROPERTIES

Native Hawaiian concerns and military historic preservation issues framed the spring meeting in Honolulu, Hawaii. Over the course of February 10-12, Council members met with Native Hawaiian representatives to learn about Hawaiian culture and practices and how they influence cultural resource management decisions. As illustrated over the course of the meeting, Native Hawaiians define "historic properties" and "consultation" within their own cultural context. Overall, connections between the natural, cultural, and spiritual landscape, including traditional and continuing use of historic resources, must be considered. This includes flora, fauna, natural features, viewsheds, and other intangibles.

The oral nature of their culture can also make it difficult for Native Hawaiians to participate fully in Federal planning and review processes that rely on written documentation and communications. At the

Honolulu meeting, the Council agreed that both members and staff should be further trained to better understand these issues. Members also voted to write Federal agencies to encourage them to create liaisons to Native Hawaiians and to involve the community. The Council subsequently received positive responses from several agencies, including the National Park Service (NPS) and the Department of Agriculture, indicating that they either had liaisons in place or were willing to establish such positions.

Army Stewardship of Historic Properties

The vast number and diversity of historic properties in the Army's inventory reflects nearly all periods in the Nation's history. From archeological resources to buildings from the Cold War era, the Army is responsible for at least 12,000 known historic structures and 40,000 identified archeological properties, as well as scores of sacred sites. Army properties include a number of National Historic Landmarks (NHLs), some of them historic districts with hundreds of individual contributing elements. As identification efforts continue across Army installations, the numbers will undoubtedly increase. The continued use of many of these properties has major implications for Army historic preservation efforts.



Rich in archeological resources, the Makua Military Reservation, an area on the Hawaiian island of Oahu used for training maneuvers and live ammunition fire training, points up Army challenges in caring for historic properties located on active installations.

In addition to the challenges of day-to-day operations and long-term management, the Army operates under a number of important statutory and policy constraints that affect its mission and how well it can use, care for, and manage historic properties. While some of the constraints can be controlled or addressed by the Army, others go beyond the service.

An understanding of the potential impact of these constraints on mission objectives is essential to examining existing programs and recommending changes to accomplish cultural resource management goals and objectives more effectively and efficiently.

Discussion of the Army's program focused on larger stewardship issues with the goal of fostering the ongoing partnership between the Council and the Army in addressing strategies for better military planning and management of fragile historic and archeological resources. The range of historic properties the Army manages and the particular challenges posed by active military installations was illustrated by visits to Fort Shafter, located in the greater Honolulu area and, at 94, the oldest Army post in Hawaii; Schofield Barracks, constructed in 1909 on what was originally Hawaiian crown lands to provide a base for the Army's mobile defense of Oahu; and Makua Military Reservation, a 4,190-acre training area on Oahu used for training maneuvers and live ammunition fire training.

The Army believes it is constrained by a lack of funds designated specifically for cultural resource management. Defense appropriation bills in each fiscal year set line-item figures for military personnel, operations and maintenance, construction, procurement, etc. Typically, funding for cultural resource management is drawn from military construction or operations and maintenance accounts as part of project costs. Preservation budgets, therefore, are generally low and could be diverted to other projects of higher priority by the installation commander. Low funding contributes to widespread deferred maintenance of historic buildings and structures.

The special constraints placed upon certain types of military funding is another consideration. For example, there have been legislative limits on the amount of money that can be spent in a given fiscal year on general officer quarters. This set amount of funding is generally insufficient to accomplish major rehabilitation or restoration, actions that are often necessary to reverse deferred maintenance problems. Proposals to exceed the funding limit require congressional approval.

A number of programs, Army-driven and legislatively directed, have strained the Army's ability to adequately manage its historic properties. Since historic preservation is not clearly mission related, its benefits are neither consistently articulated nor understood and

promoted by senior leadership. Moreover, the long term value of historic properties is not widely understood Army-wide. While policies regarding historic properties may have evolved, changes and new perspectives are not always communicated across and down the chain of command.

The Council voted to aid and support the implementation of a preservation ethic throughout the Department of Defense and other Federal departments.

Navy Stewardship of Cultural Resources

The look at Navy stewardship centered on the historic preservation challenges associated with a particular site, U.S. Naval Base Pearl Harbor where the air attack by Japan on December 7, 1941, propelled the United States into World War II. Designated an NHL in recognition of that attack and of the over-arching historical importance of Pearl Harbor in the Pacific through time, the Pearl Harbor NHL District consists of more than 1,200 buildings and structures constructed during the base's 100-year history. Among these are the submerged remains of the *U.S.S. Arizona* and the *U.S.S. Utah*, and the *U.S.S. Bowfin*, one of a small number of extant United States submarines from World War II. The base also contains numerous Native Hawaiian cultural sites, including traditional stone-walled fishponds used for aquaculture.



The sunken battleship U.S.S. Arizona, and the Navy's memorial to the ship, is the most important historic property in Pearl Harbor, Hawaii.

The sunken battleship *U.S.S. Arizona*, and a memorial structure spanning her mid-portion, remains the most important historic property at Pearl Harbor. Although the memorial is owned by the Navy and located in the middle of a Navy base, NPS has the responsibility for managing the memorial and its visitor's center and museum. More than 1.5 million people visit the memorial each year.

A new addition to Pearl Harbor is the *U.S.S. Missouri*, best known as the site where General Douglas MacArthur accepted Japan's unconditional surrender in Tokyo Bay. Following the *Missouri's* final decommissioning in 1992, she remained mothballed for six

years in Bremerton, Washington, until the Navy moved her to Pearl Harbor to facilitate creation of the Battleship Missouri Memorial, an action guided by a Memorandum of Agreement (MOA) executed under Section 106 with the Council. The ship's presence brings Pearl Harbor's symbolic importance to the history of World War II full circle. On January 29, 1999, the Missouri Memorial celebrated its grand opening, 55 years to the day after the ship was launched in 1944 at the Brooklyn Naval Yard.



Largely undisturbed since World War II, Ford Island's many historic properties must be addressed by the Navy in making plans for redevelopment around Pearl Harbor, Hawaii.

Naval operation of Pearl Harbor is covered by a 1979 Programmatic Agreement (PA) among the Navy, the Hawaiian State Historic Preservation Officer (SHPO), and the Council that has not been altered or amended since its execution. This is increasingly problematic as the Navy considers major new development at Ford Island, located in the harbor at the base. Ford Island contains buildings and structures associated with its historic use as officer housing and a naval air station. It was also the location of "Battleship Row" during the 1941 attack. Runways and structures still bear scars from the strafing and bombing. Traditionally accessible only by ferry, a bridge between the island and the mainland was opened last year. The bridge will facilitate a proposed master plan that, as originally proposed, would include 600 homes for Navy personnel, a Navy museum, and other development.

At the business meeting, the Council directed staff to provide a study of the existing Pearl Harbor PA, including the design, funding, and regulatory stages of Ford Island. Members also voted to alert the Assistant Secretary of the Navy for Installations about the Council's concerns about inappropriate development of the island.

Gathering Information for the Federal Stewardship Report

Finally, we unveiled a new, interactive section of the Council's Web site, *ACHP Forum*. A useful mechanism for gathering information and opinions for the report on Federal stewardship, *ACHP Forum* invited Internet users to help clarify current historic preservation challenges and identify Federal policy and other actions to address these challenges in the new century. Because our particular expertise relates to the Federal Government's role and its effect on the preservation of America's heritage, the forum emphasized improvements at the Federal level that might be achieved through executive and legislative action.

Initial discussion topics included:

- What are some of the major challenges to historic preservation in the 21st century?
- Do historic resources within the scope of Federal preservation efforts reflect the values of American society?
- Should the Federal Government have stronger or weaker laws to protect historic resources?
- How can Federal help for preservation be improved? and
- How can Federal property managers improve the stewardship of publicly owned resources?

Coincident with its launch, *ACHP Forum* was announced to more than 2,000 print and electronic media outlets.

SUMMER 1999, WASHINGTON, DC: GSA STEWARDSHIP OF HISTORIC BUILDINGS

The General Services Administration's (GSA) stewardship of historic Federal buildings provided the organizing point for the 1999 spring meeting. Held June 24-25 in Washington, DC, the meeting gave the Council a chance to examine GSA's new approach to historic preservation, which relies on upgrading existing building elements where possible rather than expensive total makeovers, and supplementing Federal tax dollars with private funds.

GSA set out its comprehensive historic preservation strategy in *Held in Public Trust*, a study that examined its stewardship responsibilities in a new light—one that

integrated them better into the agency's businesslike approach to providing and maintaining Federal workspace. The study included suggestions for better managing GSA's historic assets to ensure their viability and attractiveness within the agency's funding limitations and emphasized the value of careful and appropriate daily maintenance and repair of historic properties.



GSA's stewardship responsibilities include providing and maintaining Federal workspace in historic buildings across the Nation. The Ariel Rios Building, shown here, which houses the Environmental Protection Agency offices, is a critical component of Washington, DC's, Federal Triangle.

Prior to the formal business meeting, Council members toured local buildings managed by GSA, including the NHL General Post Office, the Ariel Rios Building, and the Wilson Building. These properties illustrate GSA's commitment to putting the Government's architectural treasures to use in the new millennium while stretching dollars available to renovate Federal buildings.

**Millennium Initiative:
Federal Stewardship Report**

The Council commended *Held in Public Trust* as an example of what we hope to stimulate government-wide with our own examination of the Federal Government as steward of the Nation's past. Using GSA's report as a reference point, we endorsed several topic areas for further exploration:

- the current Federal role in historic preservation;
- the Federal Government as leader, supporter, and facilitator of preservation; and
- innovative approaches for meeting preservation challenges in the public policy arena.

Building a preservation ethic nationwide is critical; Federal agencies must provide strong leadership by example. Just because stewardship responsibilities are in the law does not mean they are carried out correctly, if at all. A clear connection needs to be

made with an agency's mission and its corporate culture, as well as its history, where appropriate.

Improving Federal interaction with the local community is another aspect of the Council's report on Federal stewardship. Federal agencies need to seek new strategies to decide what historic resources are important and to whom, including developing better mechanisms to determine who and how to consult. Moreover, agencies should work to resolve potential conflicts over resource protection and use. For example, the public benefits of some large-scale preservation projects may not be immediately apparent, such as the preservation of 20th-century industrial facilities. In such cases, preservation values need to be clearly articulated given that the "buy in" by affected and concerned parties is essential for the project to succeed.

Section 106 Cases Spotlighted

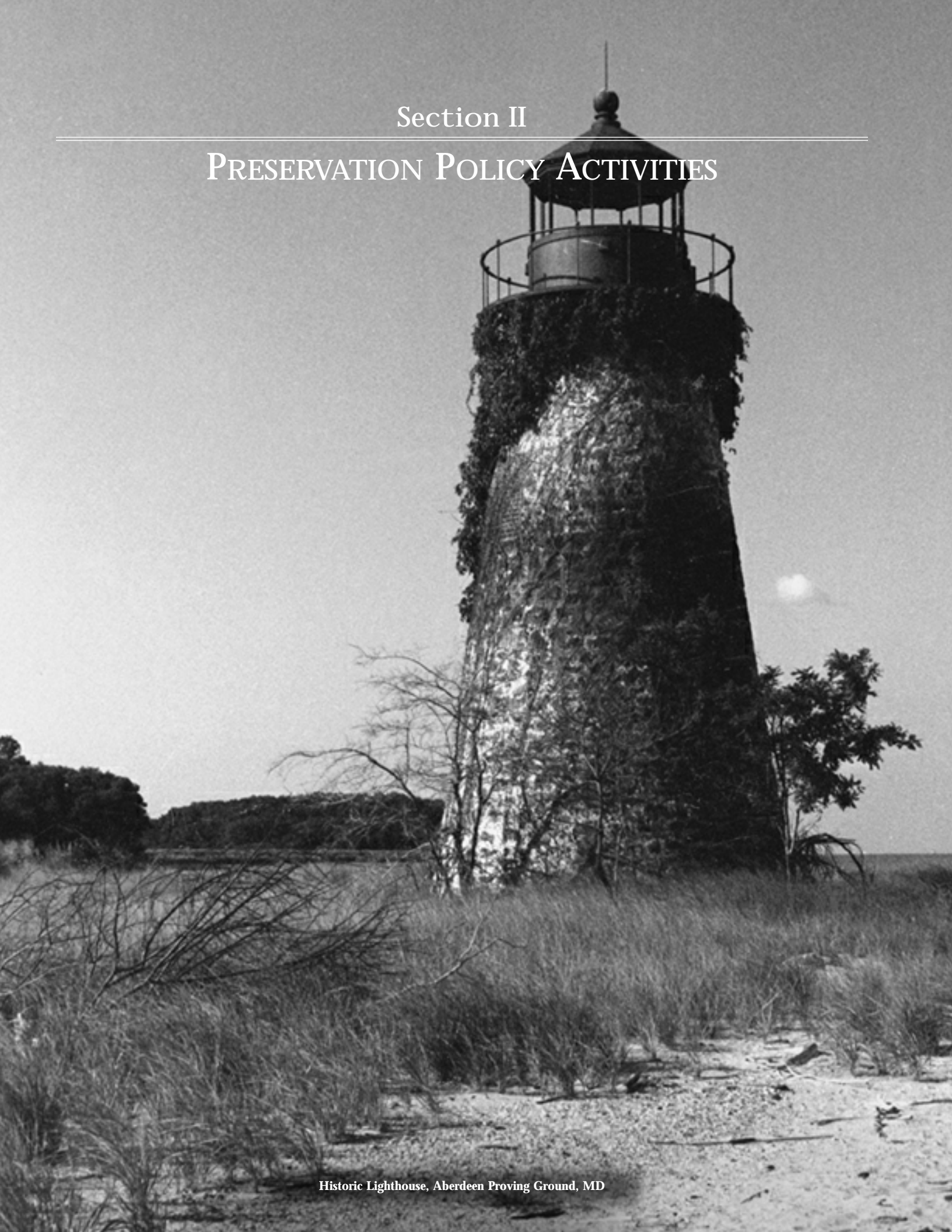
Moving from the general to the specific, the Council turned to individual examples of Federal agency stewardship of historic properties. At Gettysburg National Military Park, the National Park Service proposed to remove the 1960s-era Cyclorama Building, home of the panoramic painting depicting Pickett's Charge, to restore the historic landscapes of the Union battle lines of July 2-3, 1863, thus providing better public understanding of the course of the battle. The Cyclorama painting would be restored and relocated to a new visitor center.

The importance of the historic battlefield prompted Chairman Slater to appoint a members' working group to provide policy guidance. The working group responded with a report. Presented at the Washington, DC, meeting, *A Problem of Common Ground* sought to establish priorities among the competing historic resources by weighing at the highest policy and philosophical level the values each resource represented. It concluded that the NPS plan should go forward, subject to provisions of an agreement to be developed among the park, the Council, the Pennsylvania SHPO, and other interested parties.

Staff also reported on the Navy's closure and disposal of the Philadelphia Naval Hospital, which would result in the demolition of all the structures within the complex, including one of the finest Art Deco buildings in the city; the ongoing consultation for the projected Imperial Mine in Southern California; and the redevelopment of Ford Island in Pearl Harbor. These and other cases emphasizing the Government's stewardship responsibilities are discussed beginning on page 33.

Section II

PRESERVATION POLICY ACTIVITIES



The National Historic Preservation Act of 1966 established as national policy the use of historic properties to meet the needs of contemporary society and directed the Federal Government to take the lead in translating that policy into tangible action.

Report to Congress on Alternatives for Implementing Section 106: An Assessment

The Council's 1998 study of alternatives for implementing Section 106 of NHPA found that the fundamental elements of the current Section 106 process are sound and do not require radical change. Moreover, the concept of consultation leading to a binding agreement should be retained.

Undertaken in response to a directive by the House and Senate Committees on Appropriations, the assessment was part of our 1996 reauthorization and analyzed alternatives for modifying the regulatory process for addressing impacts of Federal actions on NHLs. It also considered alternatives for the future promulgation and oversight of implementing regulations for Section 106 of NHPA and examined possible statutory changes related to the content and implementation of Section 106 and Section 110(f) of NHPA, the latter of which addresses the protection of NHLs.

The report asked the following questions:

- *Should the fundamental nature of the current Section 106 review process be significantly changed?*
- *Is it preferable that the Council's "reasonable opportunity to comment" continue to be defined as consultation leading to execution of a Memorandum of Agreement?*
- *Should there be one set of uniform, Government-wide procedures covering the implementation of Section 106, or should there be more than one procedural and review system that distinguishes between Federal and federally assisted actions or between undertakings on public lands and on private property?*
- *Within the existing range of implementation alternatives, are there any requiring legislative changes that are desirable to explore?*

Findings and Recommendations

Drawing heavily on the information gathered through our ongoing regulatory revisions, as well as previous studies, testimony related to the Council's reauthorization, and discussions with the National Park Service, we found that considerable flexibility was built into the existing and the proposed regulations for implementing Section 106. A single, uniform set of procedures that could be used throughout the Government continued to be desirable, while the concept of "flexible application" in the administration of our regulations, coupled with existing mechanisms for agencies to develop alternative ways to implement Section 106, provided ample opportunity for tailoring and streamlining the review process.

The Council further noted that the review process could be improved operationally and that developing implementing guidance and ensuring adequate funding and staffing for agency historic preservation programs would be a major step in that direction.

These findings prompted the Council to submit a number of recommendations for consideration by Congress and others, including amending NHPA to permit Federal agencies to delegate their Section 106 responsibilities as part of an overall program delegation or approval; monitoring the success of Section 106-NEPA coordination; and adjusting the composition of the Council to better represent local interests. They are summarized in Figure 4, page 17.

Preparation of *Report to Congress on Alternatives for Implementing Section 106* was overseen by a task force of Council members including Arva Moore Parks McCabe, Miami, Florida, chair; Native Hawaiian member Raynard C. Soon, Honolulu, Hawaii; preservation experts Bruce D. Judd, FAIA, San Francisco, California, and Parker Westbrook, Washington, Arkansas; and the Environmental Protection Agency, represented by Richard E. Sanderson. The report was submitted to Congress May 22, 1998, and posted at www.achp.gov/alternatives.html.

LEGISLATIVE RECOMMENDATIONS

The Council's efforts to strengthen historic preservation in 1998 and 1999 were not restricted to considering alternate ways to implement our regulations. We advocated Federal tax policies that stimulate reuse of historic buildings by the private sector; commented on legislative referrals from the Office of Management and Budget; and consulted with our preservation partners on pending legislation. Highlights of legislative involvement during this reporting period follow.

Increasing the Historic Preservation Fund

When NHPA created the national historic preservation program in 1966, it provided the organizational structure and tools essential for a vital, effective movement. A small but critical component of that program was the Historic Preservation Fund (HPF), which affords funding for several preservation entities, including SHPOs.

The bulk of HPF monies, approximately \$31 million in FY 1999, goes directly to SHPOs and is matched by States with non-Federal funds or in-kind contributions. These funds help SHPOs fulfill their roles as directed by NHPA. (SHPOs administer the national program at the State level; review National Register nominations; consult on Federal tax incentive projects; provide technical support for historic properties and programs; and consult with Federal agencies as part of the Section 106 review process.)

Tribal Historic Preservation Officers (THPOs) also have an important role in the Section 106 review process and receive funding under the HPF. The Council increasingly relies on SHPOs and THPOs to reach consensus with Federal agencies on ways to avoid or minimize harm to historic properties. The majority of Section 106 review is conducted at the State level; likewise, many tribes have a similar role when Federal actions occur on tribal lands.

The Council generally limits its reviews to complex or controversial cases that would benefit from a Council forum. The shift of emphasis from Washington, DC, to the States was formalized in the revised regulations governing the Section 106 review process. Adequate and predictable funding for SHPOs and THPOs is necessary if the national historic preservation program and the Council are to succeed.

In 1998 and 1999, the Council strongly urged Congress to appropriate \$150 million for the HPF to support its full authorized level for the first time since it was created. In letters to selected members of House and Senate Appropriations Committees, we voiced our opinion that, based on our more than 30 years of experience working with the HPF, level funding was inadequate. The increased level would provide higher levels of support for core programs of States, Certified Local Governments, and Tribal Grants, among others. Without continued and expanded support for the SHPO/THPO role, the success of the national historic preservation program as a whole hangs in jeopardy. H.R. 701, introduced in 1999, contains such permanent levels of funding.

Reauthorization of the Council and the Historic Preservation Fund

Authorized through FY 2000 in NHPA, as amended, the Council has been closely involved in the evolution of two bills that would, among other provisions, extend our authorization through FY 2005. H.R. 834 and its close parallel, S. 1434, would amend NHPA to allow grants to the National Trust for Historic Preservation; redefine the exemption from Section 106 of NHPA for the Capitol grounds; codify the principal provisions of Executive Order 13006, "Locating Federal Facilities on Historic Properties in our Nation's Central Cities;" and reauthorize the HPF—and the Council—through FY 2005. We have twice provided testimony at hearings on these bills.

National Historic Lighthouse Preservation Act

In the summer of 1998, both S. 1403 and H.R. 2970, "National Lighthouse Preservation Act" bills, saw committee action. S. 1403 was referred to the Subcommittee on National Parks and Public Lands, while its companion bill, H.R. 2970, was forwarded to the full committee. During the 105th Congress, neither bill saw further action.

For more than a decade, the Council has worked closely with the United States Coast Guard, the National Conference of State Historic Preservation Officers (NCSHPO), and individual SHPOs to establish mechanisms for protection of historic lighthouses that are surplus to Federal needs. While supportive of both bills, we had suggested to the Committee on Resources that additional language be added to 1) ensure that any

FIGURE 4. REPORT TO CONGRESS ON ALTERNATIVES TO THE IMPLEMENTATION OF SECTION 106: SUMMARY OF COUNCIL RECOMMENDATIONS

The Council's 1998 report to Congress recommended the following alternatives for the future promulgation and oversight of regulations implementing Section 106 of the National Historic Preservation Act:

Alternatives for future promulgation and oversight of regulations for implementing Section 106

- **Responsibility:** For Federal programs carried out by State, local, or tribal governments, consideration should be given to amending NHPA to allow Federal agencies to delegate their Section 106 responsibilities to approved State, local, or tribal programs as part of an overall program delegation or approval. The Council should be involved in reviewing such program delegations and commenting on the Federal agency approval. The rights and responsibilities of applicants should continue to be dealt with in agency-specific guidance and, where warranted by the program, in alternate procedures; no statutory change for that purpose is warranted.
- **Substitution:** Considerable flexibility and incentives exist at the present time to promote the integration of historic preservation requirements with other planning approval and resource protection requirements. However, the success or failure of attempts to coordinate the requirements of Section 106 with procedures for the National Environmental Policy Act, as well as similar statutes, should be monitored, and the Council should report on this issue to the President and Congress within three years of issuance of its revised regulations. This should allow sufficient time to measure the success of coordination under revised Section 106 regulations and to consider any possible recommendations for statutory changes.
- **Oversight:** Consideration should be given to amending NHPA, so that agencies act to internalize historic preservation review more effectively. The Council also recommends that consideration be given to adjusting the composition of the Council to provide for organizational representation by the U.S. Conference of Mayors, the National Governors' Association, and/or the National Association of Counties, rather than by individual gubernatorial or mayoral membership as it is presently required. This would give the Council the benefit of more active participation and advice from State and local governments.

Alternatives to the existing review process for properties of national significance

- **Protection and planning:** Consideration should be given to amending NHPA to require Federal agency cooperation and participation in mandated National Park Service and Council reporting and review of threats to historic properties, including National Historic Landmarks. Additional funding or changing priorities in existing Federal agency spending should be considered to help ensure adequate description, protection, and enhancement of threatened or neglected NHLs under Federal jurisdiction and control.
- **Identification and evaluation:** A variety of options should be given serious thought in the future to improve the consideration of NHLs and other nationally significant properties. Improvements are needed in the timeliness and completeness of Federal planning activities as they relate to actions affecting nationally significant properties. At a minimum, additional incentives or encouragement for identifying and evaluating such properties before specific construction or other projects are under development should be authorized for States, Federal agencies, and others in the form of targeted grants programs, as well as for research and development of historic theme studies and resource guides. The process of identifying and evaluating potential NHLs on certain public lands subject to more intensive uses or development should be accelerated as a matter of national policy.

modifications to transferred lighthouses be reviewed by appropriate SHPOs prior to commencement of work and then again upon completion, and 2) require continued preservation and monitoring after transfer from Federal ownership.

Our involvement with historic lighthouses has shown that SHPOs are an invaluable resource for identifying nonprofit organizations with a proven track record for management of historic properties, reviewing plans and specifications for rehabilitation of historic properties to ensure that they meet the Secretary of Interior's Historic Preservation Standards, providing expertise on



For more than a decade, the Council has worked with the Coast Guard and other preservation organizations to establish mechanisms to protect historic lighthouses, such as this one at Aberdeen Proving Ground in Maryland, when they are determined excess to Federal needs.

preservation and maintenance techniques, and monitoring compliance with protective conditions placed on recipients of historic lighthouses. We further recommended that the Secretary of the Interior be required to consult with SHPOs, rather than simply being authorized to do so. Requiring such consultation would ensure an appropriate State voice in the process of lighthouse selection and disposal.

United States Postal Service

Decisions of the United States Postal Service regarding Post Office relocation, closure, or alteration can profoundly affect districts and buildings in the Nation's communities, many of which contain historic properties. We were, therefore, extremely interested in S. 556 and H.R. 670, "Post Office Community Partnership" bills, which would require community participation in Postal Service decisions about the location and abandonment of postal facilities. More important, both bills would require the Postal Service to follow the same local zoning, planning, and land-use laws by which other property owners must abide.



Representative of small-town Federal Government architecture at its best, Easton, Pennsylvania's, Main Post Office was slated for demolition. Citizens used the Section 106 review process to persuade the Postal Service to opt for rehabilitation.

Over the past several years, the Council has provided congressional staff with information derived from our Section 106 review experience with the Postal Service and participated in meetings on ways to advance passage of the two bills, which are virtually identical. We also commented on Postal Service amendments to 39 CFR Part 241, "Expansion, Relocation, and Construction of New Post Offices" as a proposed rule. Similar to the bills, the rule would involve communities earlier and more substantively than has traditionally occurred. We voiced our opinion that the rule did not go far enough, nor did it adequately address the need for Postal Service adherence to local zoning and planning rules. Unfortunately, only some of our suggestions found their way into the final rule.

Increasingly, towns and cities across the Nation are voicing their dissatisfaction with the lack of community input and control over Postal Service decisions that impact the quality of their lives. A Post Office is a community resource, not simply real estate. In addition to its physical presence, a Post Office also creates intangible benefits by providing a meeting place and social nucleus. Frequently located in downtown historic districts, Post Offices complement surrounding businesses by providing the critical mass necessary to drive a local economy. Too often, when a Post Office closes or relocates, the secondary impacts affect local businesses adversely. The Council plans to continue working

with congressional staff to secure passage of these or similar bills that would make the Postal Service more accountable to the communities it serves.

Construction of Cellular Towers in Rock Creek Park, Washington, DC

The Council took exception to the inclusion of Amendment 1223 in S. 1283, the District of Columbia appropriations bill for FY 2000 as passed by the Senate. We urged the House to consider our views when developing its version of the bill. The amendment directed NPS to grant an application to erect cellular antennae in Rock Creek Park in Washington, DC. Because the action is nondiscretionary, it makes compliance with Section 106 and the Council’s regulations moot. It would also significantly undermine the National Capitol Planning Commission’s future role in the approval process for wireless antennae projects.

The final version of the DC appropriations bill, H.R. 3194, was signed by the President as Public Law 106-113. Section 174, dealing with wireless communications, specifically allows construction of the two cell towers in Rock Creek Park. However, it requires that in all future instances, the provisions of NEPA, NHPA, and applicable State and local laws will be met. This provides an important reaffirmation of appropriate environmental review as part of such decisions.

Protection of Paoli and Brandywine Revolutionary War Battlefields

The principal advisor to the President and Congress on historic preservation matters, the Council offered strong support for H.R. 659, which was subsequently signed into law as P.L. 106-86, “Pennsylvania Battlefields Protection Act of 1999.” In a letter to the Subcommittee on National Parks, Historic Preservation and Recreation, Committee on Energy and Natural Resources, we urged passage of the bill for its intended purpose of protecting both the Paoli and Brandywine Revolutionary War Battlefields and authorizing the Valley Forge Museum of the American Revolution at Valley Forge National Historic Park, all in Pennsylvania.

We were well aware of the threats that confronted these important sites from development throughout Chester County. Under Section 106 of NHPA, the Council had reviewed a number of Federal actions,

such as funding support for infrastructure improvements or issuance of permits under the Clean Water Act, which were found to adversely affect the historic qualities of the Brandywine Battlefield NHL District. Section 106 review was able to help reduce the impact of some of these projects, but local officials needed considerably more support and assistance to develop successful and sustained preservation strategies. H.R. 659 provided that much-needed support.



Revolutionary War-era Brandywine Battlefield, an NHL, was threatened by the proposed construction of a new housing development within its boundaries.

SECTION 106 LITIGATION

As the following summary indicates, 1998-1999 court decisions regarding NHPA sometimes foreshadowed, and implicitly lent support to, many of the changes now that were ultimately formalized in our new regulations. The cases discussed below also reflect the importance of Council contributions in resolving major preservation issues throughout the country.

Muckleshoot Indian Tribe v. U.S. Forest Service

Section 106 and NEPA violations surround a Forest Service approval of a land exchange whereby a large timber company would receive Forest Service land containing the Huckleberry Divide Trail, a National-Register eligible, traditional transportation route of significance to the Muckleshoot Tribe. The Forest Service decided that the land exchange, and the eventual destruction of the historic trail by logging, would not constitute an adverse effect since the trail would be recorded prior to the exchange. The Forest Service based this determination on a provision under the superseded regulations that allowed turning an “adverse effect” into a “no adverse effect” by preserving information of the site through research.

The Ninth Circuit disagreed with the Forest Service's application of the regulations and clarified that recording a historic resource that is of value beyond "its potential contribution to archeological, historical, or architectural research" is inadequate and cannot support a "no adverse effect" determination. The revised regulations and the archeological guidance that accompanied them encompass the general concept behind the court's decision. Among other things, the guidance makes it clear that the destruction of sites that have value beyond the scientific data they may yield cannot be considered "no adverse effects" merely because scientific methods such as data recovery or recordation are used. The decision also highlights the importance of Indian tribes in the Section 106 process, particularly in light of their special expertise regarding properties of religious and cultural significance to them. These ideas are now explicitly incorporated in the revised Section 106 regulations.

City of Alexandria v. Slater

The recent decision of the D.C. Circuit, *City of Alexandria v. Slater*, provided support to yet another policy now formalized in our new regulations. The case involved, among other things, the Federal Highway Administration's compliance with Section 106 in the planning and construction of the much-needed replacement of the Woodrow Wilson Memorial Bridge. The Council, FHWA, and SHPOs from the District of Columbia, Virginia, and Maryland signed an MOA. The MOA set forth mitigation plans for several historic sites, while noting that FHWA had not yet identified properties to be used for "construction staging, dredge disposal, wetland mitigation, or other ancillary activities" during the period of the bridge's construction. Such ancillary activity sites are selected at the design stage of large projects such as this one. The plaintiffs, however, argued that FHWA had violated Section 106 by postponing the identification of sites to be used for the ancillary activities until after the final decision to move forward with the bridge replacement. The main issue, therefore, was about the timing of Section 106 responsibilities. The DC Circuit said that the Section 106 regulations in place at the time allowed for flexible application. The MOA framework permissibly allowed for such flexibility.

In an earlier decision, *Corridor H Alternatives, Inc. v. Slater*, the DC Circuit had stated that Section 4(f) of the Department of Transportation Act and Section 106

were violated when FHWA issued a Record of Decision approving construction of a long, four-lane highway prior to identifying the historic properties to be affected. Although a Programmatic Agreement provided for such identification on a "segment-by-segment" basis as the highway was constructed, the court believed such



FHWA approved construction of a 110-mile highway in West Virginia without a full understanding of the full range and number of historic properties it would affect. Shown here, Bott House.

an approach was inconsistent with Section 4(f) and Section 106. In *City of Alexandria* the court now distinguished its *Corridor H Alternatives* decision by stating that FHWA in *Corridor H* had postponed its Section 106 responsibilities for the entire project. In contrast, in *City of Alexandria* FHWA only postponed a minor, temporary, and ancillary part of its project from Section 106 review.

The *City of Alexandria* decision was helpful in clarifying the meaning of the *Corridor H Alternatives, Inc. v. Slater* decision, which seemed to prohibit any phasing of historic preservation review, even in projects involving large corridors. Our new regulations, promulgated a few months before the *City of Alexandria* decision, explicitly provide for phased compliance in projects involving multiple corridors, large areas of land, or property access difficulties. This is one of many measures in our new regulations, providing for flexibility and streamlining in the Section 106 process, while still safeguarding historic properties.

City of South Pasadena v. Slater

In *City of South Pasadena v. Slater*, the DC Circuit recognized and utilized the unique and important contributions that the Council provides through its involvement and comments on controversial projects. The case involved a petition for a preliminary injunction against the proposed Route 710 Freeway extension in southern California, which could adversely affect historic properties in six historic districts. The project has been strongly and consistently opposed by the Council. The petition for injunction was based on alleged violations of Section 4(f) of the Department of Transportation Act, NEPA, and the Clean Air Act.

The court heavily relied on Council comments for key findings that led to the granting of the injunction. Among other things, the court extensively cited the Council’s comments in questioning FHWA’s evaluation regarding constructive use of historic properties. The court also explicitly relied on the Council’s expertise and comments to doubt whether the conclusions on the project’s Environmental Impact Statement had a substantial



Pasadena, California’s, historic districts feature a variety of architectural styles. This Spanish Colonial Revival bungalow in Gillette Crescent dates from the 1920s.

basis in fact. The Council’s comments benefitted the court, providing it with unbiased, expert preservation assessments on the real impacts of the project and recommendations as to how the project should proceed.

Brewery Dist. Soc. v. FHWA

The past year also saw the first reported case regarding Section 110(k). This section of NHPA halts Federal agencies from providing assistance to applicants who, with the intent to avoid the requirements of Section 106, cause adverse effects to historic properties. In such situations, the Federal agency can grant the assistance only if, after consultation with the Council, the agency determines that circumstances justify granting it despite the adverse effects created by the applicant.

In *Brewery Dist. Soc. v. FHWA*, a Federal district court in Ohio denied a motion to dismiss a claim based on Section 110(k). The City of Columbus had demolished a historic State penitentiary to construct a parking lot for a new downtown arena. Local preservationists sued FHWA under Section 110(k) in order to prevent them from granting assistance to the City of Columbus for the construction of exit and entrance ramps from a highway to the new parking lot. The court disagreed with FHWA in finding that the plaintiffs had standing to sue and that NHPA conferred a private right of action they could use. Therefore, the motion to dismiss the case was denied. It is encouraging that the court decided not to dismiss the lawsuit. A major purpose behind the enactment of Section 110(k) was to deter Federal agencies from disregarding destructive actions by applicants prior to their application for Federal assistance. A summary dismissal in *Brewery Dist. Soc.* could have significantly weakened the deterrent effect Section 110(k) has on Federal agencies as well as their applicants.

Tyler v. Cisneros

The binding nature of Memoranda of Agreement was reaffirmed by the Ninth Circuit in *Tyler v. Cisneros*. In that case, plaintiffs sought to enjoin the City of San Francisco from building a low-income housing project using Department of Housing and Urban Development (HUD) funds. The project was to be built next to National Register-eligible properties and was subject to an MOA signed as a result of the Section 106 review process. The plaintiffs argued that HUD and the other listed defendants failed to meet the terms of the MOA, which was designed to mitigate the project’s impact on the plaintiffs’ historic homes. Plaintiffs sought a preliminary injunction under NHPA and NEPA. The lower, district court had

dismissed the lawsuit stating that the claims were mooted by HUD's disbursement of funds to the city agency. The argument was that NHPA contains an implicit statute of limitations, which barred assertion of the NHPA claims once the Federal agency (in this case HUD) released the funds to the city. In holding this, the court relied on Section 800.3(c) of the now superseded regulations, which stated in part that "Section 106 requires the Agency Official to complete the [S]ection 106 process prior to the approval of the expenditure of any Federal funds on the undertaking or prior to the issuance of any license or permit." The court went on to rule that even if there was no implicit statute of limitations in NHPA, the plaintiffs' claims would fail because HUD no longer exercised "continuing authority" over the funds.

In reversing the district court's decision, the Ninth Circuit stated that there was no implicit statute of limitations in NHPA. Rather, a more common sense reading of cited regulations would suggest that the "prior to" language merely refers to the timing of agency compliance. In other words, this language establishes a time during which the agency is required to conduct an NHPA review, not the time during which a plaintiff is required to bring a lawsuit. Indeed, construing the language as the district court did would effectively leave no time slot open for a plaintiff to file suit. Furthermore, the Ninth Circuit stated that it has never held that an implicit statute of limitations bars plaintiffs from bringing suit under NHPA once funds are released. Rather, the Ninth Circuit has applied the laches doctrine to resolve the timeliness of NHPA claims.

The Circuit Court also found the "continuing authority" aspect of the District Court's decision to be erroneous since the plain language of NHPA regulations states that the Federal agency may have some "continuing authority" due to its continuing involvement as a signatory to the MOA. Further, the Ninth Circuit overruled the district's decision that the city's Federal environmental review responsibilities ceased once Federal involvement in the project ceased. The statute authorizing delegation of HUD's NHPA review responsibilities provides that the local official "consents to assume the status of a responsible Federal official under [NHPA] and...consents...to accept the jurisdiction

of the Federal courts for the purpose of enforcement of his responsibilities as such an official" (42 U.S.C. 12838(c)(4)). This means that the city, as a signatory to the MOA, remains liable under NHPA for its failure to carry out the terms of the agreement.

In overturning the worrisome decision by the district court, the Ninth Circuit decided that an MOA remains binding even after the agency at issue has already disbursed its funds. If the district court's decision would have been left standing, it could have created a dangerous precedent, seriously undermining the enforceability of MOAs, a major cornerstone of the Section 106 process.

Wyoming Sawmills, Inc. v. U.S. Forest Service

Finally, although no decision has been made in the case, the recently filed *Wyoming Sawmills, Inc. v. U.S. Forest Service* case highlights what has become and is expected to continue to be a contentious area in historic preservation: How do the Establishment and Free Exercise clauses of the Constitution relate to Federal historic preservation measures protecting properties of religious and cultural significance to Native Americans?

In *Wyoming Sawmills*, a purchaser of timber sales is challenging the validity of a Historic Preservation Plan made pursuant to a Section 106 PA. The plan provides for certain measures to protect the Medicine Wheel NHL in Bighorn National Forest, Wyoming. Among other things, the plaintiff asserts that the plan and activities taken in furtherance of it promote the religion of Native Americans and, therefore, violate the Establishment Clause of the Constitution.

Various laws, such as the 1992 amendments to NHPA, the American Indian Religious Freedom Act, and Executive Orders, exhort Federal agencies to consider and/or protect sites of cultural and religious significance to Native Americans. When Federal agencies approve certain measures providing such protection, they are sometimes subjected to Establishment Clause challenges by various industries and public interest groups. On the other hand, when such protective measures are not approved or considered, Native Americans sometimes claim the Federal agencies are violating those same laws and the Free Exercise Clause. It remains to be seen how the courts handle these issues.

EMERGING ISSUES

As the discussion above suggests, coordinating preservation policy was an important component of the Council's 1998-1999 work. With the role, size, and organization of Federal agencies undergoing reevaluation and familiar programs being dramatically restructured and reinvented, it will undoubtedly remain in the forefront. Restructuring of the Department of Agriculture, the prospect of substituting consolidated block grant funding for current housing and transportation programs, and the emerging role of Native Hawaiians and Indian tribes in exercising greater self-determination on tribal lands present great challenges for the national historic preservation program and have all been reflected in our policy agenda. With the advent of new regulations, the Council looks forward to adapting the Federal historic preservation review process to ever-changing administrative and funding needs.

Incoming Section 106 cases provide a useful lens through which to view other emerging issues.

In 1998 and 1999, for example, cases revealed conflicts between Section 106 and the Mining Act of 1872 as implemented by the Bureau of Land Management; difficulties faced by the General Services Administration in meeting the requirements of the Federal courts system while coordinating various environmental reviews; and questions about environmental justice. These and other cases with long-term policy implications are presented at the conclusion of this report.

Through its policy development and program coordination work in Fiscal Years 1998 and 1999, the Council attempted to make manifest its leadership role in the national historic preservation program. Designed to support and encourage historic preservation activities carried out by State, local, and tribal governments and the private sector, the vigorous policy development and program coordination agenda for 1998-1999 demonstrated the Council's commitment to the broad goals of NHPA.

Section III

IMPROVING FEDERAL HISTORIC PRESERVATION



Priest Rapids Dam, Washington State

During this reporting period, the Council undertook a variety of activities designed to improve the historic preservation programs of Federal agencies, using regular business meetings to examine the Federal Government's two chief roles in historic preservation:

Steward for publicly owned and controlled historic resources and *partner* with State, tribal, and local governments and the private sector in advancing historic preservation goals through provision of financial, technical, and other forms of assistance. The focus of the Council's principal contribution to the White House Millennium Program, better stewardship of Federal resources (see Figure 5, page 27) was also the goal of program initiatives with the Federal Energy Regulatory Commission (FERC), the U.S. Forest Service, the Federal Highway Administration, and the Departments of the Navy and the Army.

POWER PRODUCTION

Hydropower

In 1998-1999, the Council worked extensively with FERC and the hydroelectric industry, including the National Hydropower Association, to improve planning for historic properties at hydroelectric facilities. In February 1999, we hosted a meeting for FERC and industry representatives to identify areas of mutual concern and possible solutions to historic preservation and Section 106 compliance issues. Two clear needs emerged from the discussion: updated and expanded standard language and guidance for agreement documents for hydropower relicensing projects, and guidance on developing Historic Resources Management Plans. Completion of these products should help improve the quality of the management plans and reduce costly developmental delays. The Council will continue to work with FERC and industry toward that end.

In March 1999, the Council was invited to participate on an interagency task force to improve hydroelectric licensing processes, along with FERC, the Department of the Interior, the Department of Commerce, the Department of Agriculture, the Environmental Protection Agency, and the Council on Environmental Quality to improve the coordination between Section 106 and FERC relicensing. Since then, we have served on

two task force work groups: one charged with coordinating Federal mandates in relicensing; the other with facilitating constructive participation in FERC's collaborative process. These products are currently under review by the task force steering committee, which is composed of senior representatives from agencies other than the Council. We also helped draft NEPA procedures and guidance on FERC's collaborative procedures. Even though the Council plans to pursue a separate but related program initiative with FERC, work with this interagency group will continue.

The Council made significant strides in building a closer working relationship with the power industry during the past reporting period. The Edison Electric Institute invited us to participate in the cultural resource management session of its 1998 national workshop, "Partners in Stewardship: Reducing Costs through Cooperation," in



The Council has worked to improve consideration of historic properties for hydropower relicensing projects and Historic Resources Management Plans at hydroelectric facilities. Priest Rapids Dam in Washington State is one such example. (Photo courtesy of Grant County Public Utility District)

Albuquerque, New Mexico. Later in 1998, we participated in the Utilities Round Table on Cultural Resources in LaConner, Washington. This annual conference, sponsored by several hydropower licensees in Washington State, was attended by some 70 representatives from the hydroelectric industry—those who work directly with Section 106 compliance and those who work for or contract with license applicants and licensees.

The Council presented an overview of the new regulations and shared the latest developments and improvements in coordinating Section 106 review and the hydroelectric relicensing process. The Council's national perspective on the hydroelectric industry and historic preservation was well received. Better communication among all participants involved in relicensing activities can facilitate more sensitive treatment of historic properties, making compliance with Section 106 less burdensome.

Natural Gas

In November 1998, the Interstate Natural Gas Association of America (INGAA) sent the Council a revised Interagency Cooperative Agreement proposed to streamline the gas pipeline certification process; establish clear points of cooperation between Federal agencies; encourage early resolution in the certificate process; and avoid duplication of effort. This agreement reflects our prior work with INGAA to look more broadly at how natural gas pipeline construction addresses cultural resource issues and how Section 106 review could be streamlined.

In further efforts to improve handling of historic property concerns by FERC for pipeline approvals, the Council commented extensively on three proposed FERC rules. In general, we applauded FERC's efforts because we believe that the proposed rules would update their existing regulations to better comport with current policies, provide applicants with greater clarity about environmental requirements and reporting, and generally streamline the process. However, we expressed concern about how effectively these proposed rules could be implemented and coordinated with FERC's responsibilities under Section 106. In light of Council concerns, which are reflected in the specific comments submitted to FERC, we will continue to work with FERC and INGAA to identify and resolve problems and inefficiencies.

RESOURCE PROTECTION

Forest Service

The Council executed a Programmatic Agreement with the Forest Service and the Bureau of Land Management for the wildfire management program in Colorado in 1998. In particular, the PA addressed the protection of historic properties in the agencies' programs for management of naturally ignited wildfires

that the agency determines should be allowed to burn. This effort led to subsequent discussions with the Departments of Interior and Agriculture to develop national standards for historic property protection in wildfire management. These standards are expected to be incorporated into a national PA during Fiscal Year 2000. On a more general note, we opened discussions with the Southeast Region of the Forest Service to undertake a comprehensive examination of its regional PA and examine changes that may be necessitated by the newly enacted Section 106 regulations.



The new agreement among the Council, the Forest Service, and the Bureau of Land Management addresses the protection of historic properties when the agencies decide to let naturally ignited wildfires burn.

Federal Highway Administration

Following passage of the Transportation Efficiency Act for the 21st Century, the Council has participated actively in various efforts to streamline the environmental review process for highway and transit projects. Working as a task force member with representatives of other Federal and State agencies involved in the environmental review process, we have established goals to reduce project delays while continuing to protect the environment. Toward that end, we have signed two Memoranda of Understanding with FHWA headquarters and with mid-Atlantic regional partners to direct and continue the cooperative effort. Also on the transportation front, we have been partnering with FHWA to provide detailed training to transportation planners. This has included a one-hour briefing for a national FHWA video conference and workshops for State departments of transportation throughout the country.

MILITARY ISSUES

Department of the Navy

In response to concerns expressed by the Senate Committee on Appropriations, the Navy initiated

FIGURE 5. THE COUNCIL'S MILLENNIUM INITIATIVE ON FEDERAL STEWARDSHIP

Beginning in 1998 and continuing through 2000, the Advisory Council on Historic Preservation has been studying how the Federal Government can improve its stewardship of the Nation's historic and cultural resources. This study will culminate at the end of FY 2000 with a major policy report with recommendations for the President, the Congress, and the Executive Branch.

Our study is intended to complement such millennium initiatives as "Save America's Treasures." That program is a public-private effort under the auspices of the White House Millennium Council to develop support and funding for care of specific important historic places and icons of America's heritage like the Star-Spangled Banner. In taking an initial broad look at historic preservation policy and ways to meet the challenges facing it in the new century, the Council has become convinced that a sustained commitment to Federal stewardship and the leadership the Federal Government can and should provide in preserving America's heritage is an appropriate follow-up step. Therefore, the Council's report will begin by making the case for Federal stewardship of historic and cultural resources, summarize what resources are under Federal care and management, discuss some of the challenges to better stewardship of the past, and offer recommendations on how to meet those challenges.

The report will examine in depth three aspects of preservation policy and Federal programs that may be key ingredients in improving Federal Government attention to these needs:

- leadership in building a cultural stewardship ethic;
- commitment in taking care of the Nation's historic and cultural resources as important public assets; and
- accountability in making public interest decisions affecting preservation of our heritage.

Positive as well as negative examples of Federal agency activities are being examined, and opportunities for partnership, innovation, and leveraging of funding and other support will be highlighted. The report is being informed by views and ideas from key participants and interested citizens, which have been obtained in part through an electronic public forum established on the Council's Internet site.

The Council's findings and recommendations will be published in a widely circulated, illustrated report, which will also be available on the Internet.

Council Meeting Focus

Over the past two Fiscal Years, regular Council meetings have been devoted in part to a focused examination and discussion of critical issues connected with the Federal Government's role and responsibilities in historic preservation. Each of these meetings had an onsite component, so that members could examine real resources and issues of concern to Federal agencies and others who work with them or are affected by their actions.

After each meeting, staff, in consultation with the members task force, developed suggestions for future agency program improvements. This material is supported by agency presentations, public testimony, and observations from our meetings, as well as targeted follow-up research.

Internet Discussion Forum

Grassroots input from a broad range of government officials, interested organizations, and individuals was solicited via our Web site through a discussion forum. We received ideas and opinions from Federal employees, State and local officials, citizen activists, Native Americans, historic preservation professionals, business owners, and other members of the interested public.

In addition to the Internet discussion forum and Council meetings, we have employed targeted mailings to the heads of Federal agencies, interviews with Federal Preservation Officers, public presentations to preservation conferences, and electronic as well as documentary research on Federal activities. Referenced materials include previous special studies, annual reports, strategic plans, budget documents, and similar sources. Key agency documents and case studies from Council staff experience are providing important insights.

consultation with the Council to address the costs of maintaining historic housing. We worked with the Navy to develop a PA that adheres closely to the *Historic and Archeological Resources Protection Planning Guidelines* issued by the Navy. Fundamental to the guidelines and the PA is the categorization of historic properties as a means of prioritizing expenditure of scarce maintenance and preservation dollars. The focus on preservation and the need for review under Section 106 diminishes relative to the significance and use potential of the properties. The PA is undergoing final review by the Navy.

Department of the Army

The Council continued to provide the Army support and expertise in implementing its cultural resources management program under an Interagency Agreement (IAG) with the U.S. Army Environmental Center. The IAG authorizes the Council to provide staff to the Army to implement the agreement and to serve as subject matter experts on historic preservation issues. Now entering its fifth year, this partnership fosters better military planning for management of historic and archeological resources, while supporting the Army's defense mission.

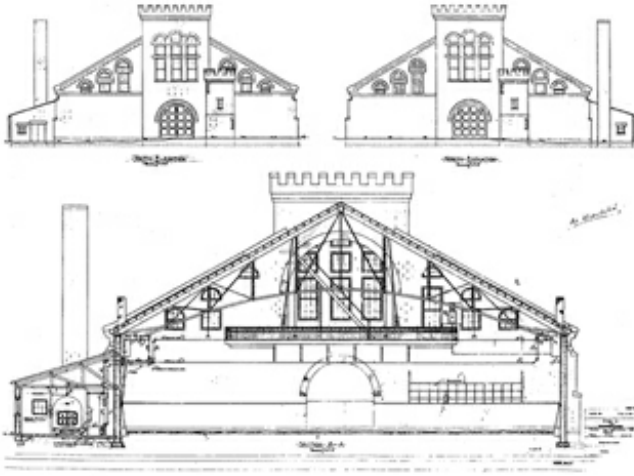


The costs of maintaining historic housing, such as Officers' Row at the U.S. Naval Academy, in Annapolis, MD, is the focus of an agreement the Council is developing with the Navy.

An ongoing component of the IAG is a collaborative effort to develop Army Alternate Procedures to the Council's regulations for purposes of Army compliance with Section 106. (This initiative was first established as counterpart regulations but has changed to alternate procedures as authorized under the Council's new regulations.) A first draft of the counterpart regulations was distributed in the fall of 1997 for review and comment. A second draft was distributed in the winter of 1998, again requesting review and comment. As part of this process, the Council helped the Army conduct consultation meetings with the National Trust for Historic Preservation, the NCSHPO task force, the National Association of Tribal Historic Preservation Officers, Indian tribes, and Native Hawaiians. Tribal consultation meetings were conducted in various regional locations throughout the United States. The Council also established a members task force and a staff review team to oversee the development of the alternate procedures.

Also under the IAG, the Council provided review and technical input on several Army-produced documents to ensure consistency with NHPA. These products included historic contexts, Economic Analysis Software programs, Integrated Cultural Resource Management Plans, and Maintenance Standards for Historic Buildings. We provided considerable input on historic context development that addresses Cold War resources, Capehart-Wherry Army family housing, and Quartermaster Corps construction. Related projects completed under the IAG in FY98 and FY99 include an update to *Federal Historic Preservation Case Law, 1966-1996*, produced jointly by the Council and the Army in FY96, and an update to *Army Regulation 200-4: Cultural Resources Management* to reflect changes in Army policy and procedures based on our revised regulations. The Council also provided guidance on treatments developed by the Seattle District of the Army Corps of Engineers for historic windows, lead paint, wood types, and housing.

We worked closely with the Army's Native American Program to assist in the development of guidance and technical materials for Army headquarters and installation personnel, and contributed to *Native American Consultation Guidelines*, a useful tool for installations in developing relationships with Native Americans and Native Hawaiians and defining consultation protocols that respect the government-to-government relationship between



Under an Interagency Agreement with the Army, the Council provided input on the development of historic contexts for Quartermaster Corps construction. This standardized design for a gymnasium comes from Ft. Riley in Kansas.

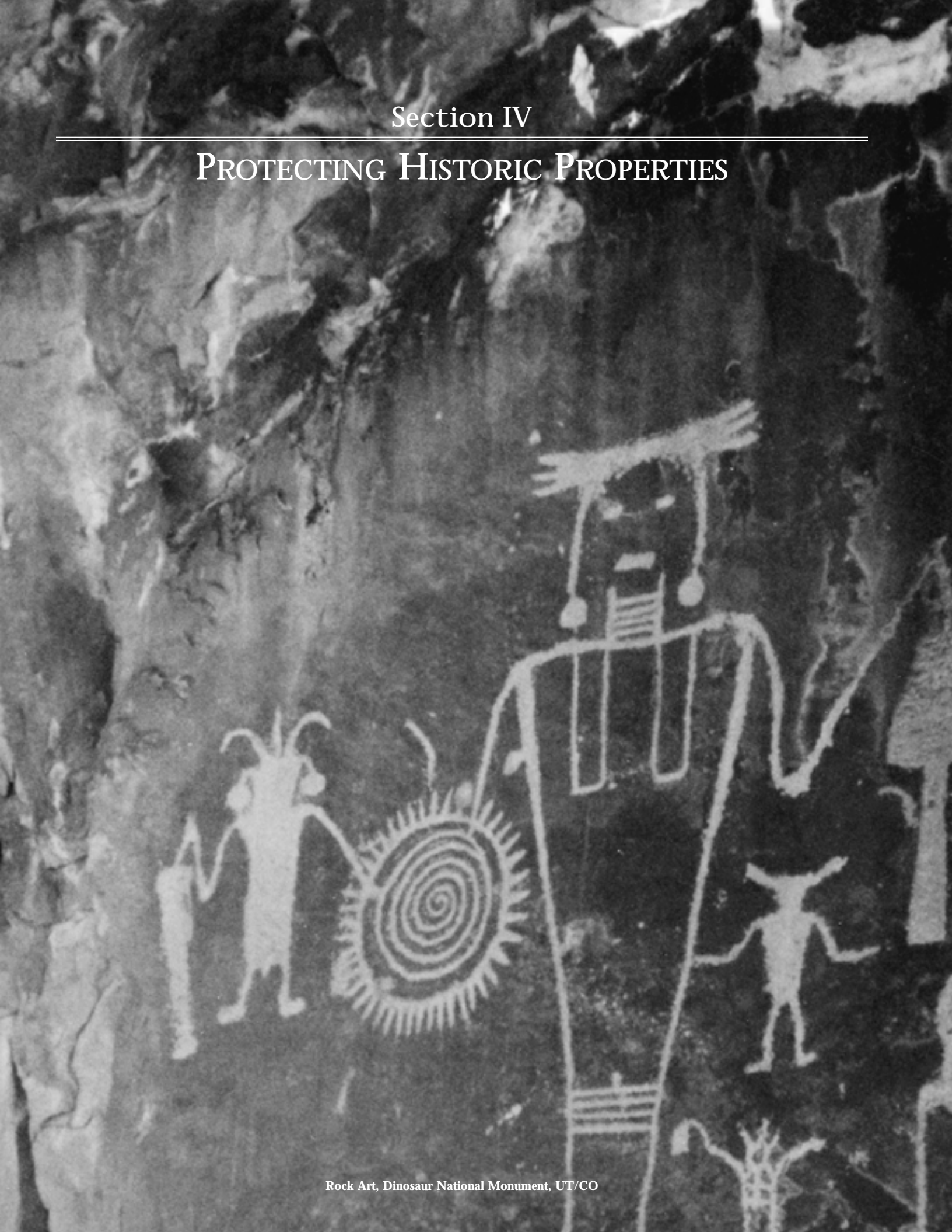
the Army and federally recognized tribes. We participated in the 1998 Army-Native Peoples workshop and provided input in Native American Program guidance.

Other ongoing initiatives include updating the *National Historic Preservation Act Reference Guide to Federal Projects* and *Archeology Resource Planning and Management: Guidance for Army Installation Commanders* to reflect changes in Army policy and procedures based on our revised regulations. More information about the Army program can be found on the Council's Web site at www.achp.gov/army.html.

Program improvement activities of all kinds assume greater importance as Federal agency resources, both financial and human, shrink. Such activities provide a vehicle for adapting legally mandated historic preservation responsibilities to changing agency capabilities, increasing efficiency, and focusing Federal attention on important historic preservation issues. The relatively small investment in maintaining Council expertise and the ability to provide it to Federal agencies produces significant cost savings to the Federal Government and promotes preservation of important historic properties.

Section IV

PROTECTING HISTORIC PROPERTIES



Section 106 of NHPA, the fundamental Federal legal protection for historic properties, directs Federal agencies to consider the impact of proposed actions on properties included in or eligible for inclusion in the National Register of Historic Places, and provide the Advisory Council on Historic Preservation with an opportunity to comment.

Section 106 is implemented by Council regulations, "Protection of Historic Properties," which require agencies to consult with SHPOs, Indian tribes, Native Hawaiian organizations, local governments, and applicants for Federal assistance to resolve adverse impacts on historic properties. These regulations were revised in 1999, significantly modifying the existing Section 106 review process and introducing new streamlining opportunities.

IMPROVING SECTION 106 REVIEW

The May 18, 1999, publication of the Council's revised regulations in the *Federal Register* as a final rule brought to closure a reform effort that spanned six years. As previously reported, in response to the 1992 NHPA amendments and the Administration's National Performance Review, in 1993 the Council had embarked upon a comprehensive review of the Section 106 regulations with an eye toward improving the efficiency and effectiveness of the review process. (The regulations were last amended in 1986.) Using focus groups of key Section 106 users to help shape the effort, we surveyed more than 1,200 Federal, State, and local agencies, Indian tribes, organizations, and individuals.

Led by the Regulations Task Force, the Council adopted policies to guide reform and approve specific changes. In October 1994, a draft of the proposed new procedures was published in the *Federal Register* for public comment. Approximately 400 agencies, organizations, and individuals commented on the draft and, while most endorsed its intentions, concerns about the substance of the revised regulations encouraged the Council to rethink the proposal.

Further meetings were held with user groups, particularly business and industry users affected by the Section 106 review procedures. Subsequently, the task force circulated an informal discussion draft among all previous commenters. Nearly 100

organizations and individuals responded to this draft, most of whom commended the Council on significant improvement to the initial effort.

Following interagency and Office of Management and Budget review during summer 1996, a revised proposed regulation was published for public comment on September 13, 1996. By the close of the formal comment period in mid-December, some 230 individuals and organizations had weighed in, the majority deeming the 1996 draft a "great improvement" over its predecessors.

Comments received from Indian tribes both during and after the formal comment period, however, revealed general dissatisfaction with the lack of face-to-face consultation with Indian tribes in accordance with the President's 1994 Memorandum on Government-to-Government Relations with Native American Tribal Governments. In response, the Council launched intensive consultation with tribes in a series of government-to-government meetings held across the country in summer 1997.

Comments received through tribal consultation indicated that tribes overall were dissatisfied with the direction of the regulations. They were most concerned with the identification and evaluation of historic properties, including properties to which they attach religious and cultural significance. They were apprehensive that Federal agencies' identification efforts would be incomplete and that agencies would make "no historic properties affected" determinations without prior consultation with the tribes.

The relationship between tribal and SHPO responsibilities was also of concern to tribes. When undertakings were on tribal lands, tribes did not want SHPO involvement. When undertakings were on non-tribal lands but affected properties to which they attached religious and cultural significance or other historic properties of tribal concern, then tribes wanted equal status with SHPOs and NCSHPO in the process.

With regard to the Section 106 process on tribal lands, the issues consistently raised reflected the underlying issue of a tribal nation's sovereignty. The primary concern was the ability of a SHPO to make or agree to a decision by a Federal agency on tribal lands when there was no THPO. Tribal representatives explained why this was a problem for tribal governments and why the regulatory process under the June 1997 draft regulations that enabled a State to have overriding decision-making authority on tribal lands questioned their sovereign status. They maintained that regardless of whether the tribe had formally assumed SHPO duties, the State did not have the jurisdictional authority to have final oversight for a Federal undertaking on tribal lands.

Off tribal lands, tribal representatives maintained that sovereignty, treaty rights, trust responsibility, and government-to-government status entitled tribes to a role in the Section 106 process that was greater than the other "consulting parties" or general public as defined in the draft proposal.

The discussion surrounding the identification, evaluation, determination of effect, and potential mitigation proposals for properties to which the tribes attached religious and cultural significance resulted in recommendations that tribes should be involved early in the process and should be required signatories to a Memorandum of Agreement, or at least have the ability to concur or object to the part of a project or plan that will affect an area of tribal or Native American interest.

The final draft regulation that went to OMB for interagency review on November 22, 1997, responded directly to these concerns, although tribal roles both on and off tribal lands continued to be refined through 1998.

The final rule published May 18, 1999, embodied the principle that Indian tribes should have the same extent of involvement when actions occur on tribal lands as the SHPO does for actions within the State. This includes the ability to agree to decisions regarding significance of historic properties, the effects to them, and the treatment of those effects, including signing MOAs. Off tribal lands, Federal agencies must consult the appropriate tribe or Native Hawaiian organization.

The provisions recognize Federal agency obligations during project planning to consider properties to

which tribes attach religious and cultural significance. Provision is also made for the involvement of the Tribal Historic Preservation Officer in lieu of the SHPO for undertakings on tribal lands when that official has assumed the responsibilities of the SHPO as authorized by NHPA.

Highlights of Major Changes

Under the new regulations, the Council will no longer review routine decisions such as adverse effect findings and most Memoranda of Agreement that are agreed to by the Federal agency and the SHPO or THPO, recognizing that their respective capabilities to do effective preservation planning has grown substantially since the regulations were revised in 1986. The Council will focus its attention instead on those situations where our expertise and national perspective can enhance the consideration of historic preservation issues. Criteria accompanying the regulation specify that the Council may enter the Section 106 process when an undertaking 1) has substantial impacts on important historic properties; 2) presents important questions of policy or interpretation; 3) has the potential for presenting procedural problems; 4) presents issues of concern to Indian tribes or Native Hawaiian organizations.

The new regulations emphasize the Federal agency's primary responsibility for Section 106 decisions, and the advisory roles of the Council and the SHPO/THPO are clarified. Other participants' roles are more clearly defined, particularly Indian tribes, local governments, and applicants, who may participate in the review process as "consulting parties." Certain individuals and organizations may also be entitled to be consulting parties, based on the nature of their relation to an undertaking and its effects on historic properties. Others may request to be involved. The exclusive role of the Federal agency to make the ultimate decision on the undertaking is stressed and the advisory roles of the other parties are clearly stated.

The revisions also acknowledge the direct interests of applicants for Federal assistance or approval and specify greater opportunities for active participation in the Section 106 review process as consulting parties. Applicants are permitted to initiate and pursue the steps of the process; however, the Federal agency remains responsible for final decisions regarding historic properties. Provisions have been added to encourage agencies to initiate compliance with Section 106 and begin consultation with the

SHPO/THPO and others early in the project planning stage. This feature should promote early agency consideration of historic properties and prevent late recognition of an agency's legal responsibilities, which can cause delays or compliance problems.

Agencies are encouraged to integrate Section 106 review with reviews required under NEPA and related laws. Specific provisions that make identification and evaluation, public participation, and documentation requirements more flexible facilitate this and will streamline reviews, allowing agencies to use information and analyses prepared for one law to be used to meet the requirements of another. The regulations authorize agencies to use the preparation of Environmental Impact Statements and Environmental Assessments under NEPA to meet Section 106 needs in lieu of following the specified Council process. This is expected to be a major opportunity for agencies with well-developed NEPA processes to simplify concurrent reviews, reduce costs to applicants, and avoid redundant paperwork.

Federal agencies may seek exemptions from Section 106 or advisory comments on an entire program. Also, the Council may establish standard methods of treating recurring situations. This will allow agencies to save both time and resources that would otherwise be committed to legally mandated reviews.

Opportunities for public involvement in the Section 106 process are simplified and more clearly defined, and Federal agencies are encouraged to use their established public involvement procedures where appropriate. It is hoped that clarification in this area will reduce controversy over the adequacy of an agency's efforts to involve the public.

Finally, the provisions allowing Federal agencies to substitute internal procedures for the Council's Section 106 regulations no longer require that the agency procedures be formal rules or regulations. This provision will make it easier for agencies to tailor the Section 106 process to their needs. Approval of such substitute procedures is linked to requirements of Section 110(a)(2)(E) of NHPA.

Project Reviews

While regulatory revisions moved ahead, project review continued under the existing regulations. In Fiscal Years 1998 and 1999, the number of new cases submitted for review—2,300 and 1,134, respectively—continued

a downward trend over previous years. This trend was influenced by a number of factors but clearly one cause is the general anticipation of agencies awaiting the new streamlined Section 106 review process. Related to this is the reluctance of many agencies to invest training key personnel in Section 106 until the new regulations were in place. As in previous years, all but a few cases were resolved through consultation. The ten cases that were terminated or deemed foreclosures were commented on by panels of members or through Chairman's letters. The trend is expected to continue under the Council's new regulations, since SHPOs are now empowered to conclude routine Section 106 review absent our involvement.

Section 106 review has been recognized as a model conflict resolution process. It brings together parties with significant interest in the issues presented; defines a clear framework for consultation and interaction; and prescribes the format for negotiated outcomes reflecting the agreement of involved parties. The Council's revised regulations ensure continued protection for historic properties in the new millennium. For an overview of current Section 106 cases highlighting specific policy issues, consult our Web site.

SELECTED SECTION 106 CASES, 1998-1999

Section 106 of NHPA requires Federal agencies to consider historic preservation values when planning their activities. When conducting Section 106 review, the Federal agency must identify affected historic properties, evaluate the proposed project's effect on those properties, and explore ways to avoid or mitigate any adverse effects. The Federal agency conducts this process in consultation with State and Tribal Historic Preservation Officers, the Council, when appropriate, and other parties with an interest in the preservation issues.

Each year, thousands of Federal actions undergo Section 106 review. The vast majority of cases are routine and can be resolved at the State or tribal level, without Council involvement. However, a considerable number of cases present issues or challenges that warrant the Council's attention. They may embody complex preservation issues, attract substantial public controversy, or represent precedent-setting situations or significant impacts on important historic properties.

The following snapshots of cases selected from the Council's 1998-1999 docket of project reviews provide information on a representative cross-section of Section 106 projects in which the Council has been involved. They illustrate the great diversity of Federal actions and range of resources that can be affected by Federal actions.

These cases also highlight the wide variety of Federal activities that trigger the Section 106 review process. While Federal involvement is obvious when, for example, the Federal Highway Administration funds a highway construction project or the General Services Administration builds a Federal courthouse, the Federal connection and presence can be obscure when it is an Army Corps of Engineers permit for a privately funded housing development or a Department of Housing and Urban Development grant administered by a small town.

Finally, these projects reflect the variety and complexity of Federal activities that come before the Council. They show the ways the Government influences what happens to historic properties in communities throughout our Nation and points up the importance of an informed public. Alert to the potential conflicts between Federal actions and historic preservation goals, citizens can use the Section 106 review process to achieve the best possible preservation solution.

For the purposes of discussion, the cases that follow have been organized according to major themes in the Council's 1998-1999 work: Federal Stewardship; Sprawl; Native American Issues; Cultural Diversity; and Preserving the Recent Past.

FEDERAL STEWARDSHIP

Long Beach Naval Station Demolition, California

Selected for disposal in 1995 by the Navy, the Long Beach Naval Station in California was to be redeveloped by the city as a container terminal development. The proposal called for the complete demolition of the station's Roosevelt Historic District, a 1940 International-style campus designed by noted Southern California architect Paul Revere Williams. For many Long Beach citizens, the district symbolized the city's historic relationship with the Navy.

A lawsuit by a local historic preservation group challenged the city's analysis of alternatives in the environmental impact report, and the court held that the California Environmental Quality Act had not been complied with. With this project's consulting parties, the Navy drew up an agreement that still resulted in the demolition of the historic district but that required certain measures for its commemoration plus \$4.5 million for preservation efforts in Long Beach.



Declared surplus by the Navy in 1995, Long Beach (California) Naval Station's Roosevelt Historic District, a 1940 International-style campus, was slated for demolition.

Slated for closure by the Defense Base Closure and Realignment Commission, the Long Beach Naval Station in Long Beach, California, was declared surplus in 1995 by the Navy, which initiated the process for its disposal. Through the Base Realignment and Closure disposal process, the city of Long Beach, acting as the Local Reuse Authority, and the Port of Long Beach, a political subdivision of the city, determined that the highest and best use of the property would be its redevelopment as a container terminal development.

Although the Navy initiated Section 106 review for the disposal action in December 1995, negotiations to consider alternatives to the proposed adverse effect and develop a Memorandum of Agreement did not begin until September 1996. During these consultations, the city presented information regarding the design of container terminal facilities but was unwilling to develop a reuse study. Alternatively, the city proposed that the port establish a fund for other preservation projects within the City of Long Beach to compensate for the loss of the Roosevelt Historic District.

In the fall of 1996, a lawsuit was filed by the Long Beach Heritage Coalition under the California Environmental Quality Act (CEQA), challenging the port's analysis of alternatives in its Environmental

Impact Report. In May 1997, the Los Angeles Superior Court determined that the CEQA process had not been complied with because of the port's predisposition to the proposed terminal project.

In August 1997, the Navy agreed to initiate research necessary for the preparation of an Adaptive Use Study for the Roosevelt Historic District. The study, finalized in November, was developed by a team of experts in many fields including architecture, planning, and economics. The study identified two potentially feasible alternatives that would retain many of the significant properties within the historic district: an Auto Terminal and an Institutional Campus that could include a police academy and fire department, a museum, and the Port of Long Beach administrative offices. These two alternatives, along with the container port option, were examined by the Navy under the National Environmental Policy Act.

After several intensive consultation meetings and a second public hearing, an MOA was finally reached in January 1998 for the disposal of the Long Beach Naval Station. The MOA, executed by the Navy, the Council, the California State Historic Preservation Officer, the City of Long Beach, and local historic preservation groups, includes mitigation provisions for the three alternatives analyzed under the Environmental Impact Statement.

Following its analysis of alternatives, the Navy selected, through its NEPA Record of Decision, the container port alternative. Following the demolition and in compliance with the MOA, the Port Authority provided \$4.5 million to the Long Beach Heritage Fund to support the identification, preservation, and



Dating from 1835, the General Post Office in Washington, DC, an NHL, retains an extraordinary level of integrity for a building of its age and use.

interpretation of historic resources within Long Beach. In addition to the fund, a professional quality documentary video of the Naval Station was prepared, architectural and landscape elements were salvaged, and other measures were completed to commemorate the historic district.

General Post Office Transfer/Lease, Washington, DC

The General Services Administration's plans to transfer and lease the General Post Office Building in Washington, DC, illustrate Federal historic preservation stewardship at its best. One of the first significant Federal buildings constructed in the Nation's capital, the structure has posed a challenge to GSA due to its high level of integrity—extraordinary for a building of its age and history of use.

In exploring its options for the future of the building, GSA conducted multiple analyses, involved the public at length, considered the opinions of consulting parties, and advertised its initial scope of plans in the national media. In addition, the Public Buildings Service Commissioner made certain that historic preservation issues were given considerable weight in GSA's analysis and review of the property-use proposals it received.

In 1835, the Government began building the first significant Federal building in the national capital since the Capitol itself: the General Post Office Building. Originally based on a design by Robert Mills, the General Post Office was expanded and completed in 1845 under the design of Thomas U. Walter, one of the architects of the Capitol. This National Historic Landmark and National Register-listed building (also known as the U.S. Tariff Commission Building) retains an extraordinary level of integrity for a building of its age and history of use.

It is this historic integrity that has posed the greatest challenge to the building's owner, GSA. Indeed, GSA reached its decision to lease the now-vacant building after multiple analyses completed over a period of several years demonstrated the difficulty—and cost—associated with rehabilitating the building for office use or museum space, while respecting the historic fabric of the building and not compromising its integrity.

After numerous requests for funding an appropriate rehabilitation or renovation program were declined by Congress and executive branch agencies, GSA

determined to pursue leasing the property for private use pursuant to the authorities granted in Section 111 of the National Historic Preservation Act. GSA's plans call for leasing the property to a private entity with the rehabilitation and renovation program being carried out under the aegis of GSA; revenue from the lease would be used by GSA to maintain this, and other, historic properties in its portfolio.

GSA advertised its initial plans in the *Wall Street Journal* and on its Web site and developed a request for qualifications and use of the property. Public Buildings Service Commissioner Robert Peck made certain that historic preservation issues were given great weight in GSA's analysis and review of the proposals it received. After a lengthy and quite successful public participation process, GSA analyzed the proposals and selected the Kimpton Hotel Group as the developer for the project.

The Council and the District of Columbia Historic Preservation Officer felt that use of the building as a hotel would be a better "fit" from a preservation perspective, as less-intrusive remodeling and renovation would be needed than if an apartment scheme were adopted. In addition, the building's use as a hotel would also mean that the property and its significant interior spaces would remain open and accessible to the general public. GSA is in the final stages of negotiating the lease agreement and a Memorandum of Agreement that will govern how the Section 106 process is concluded.

Maluhia Hall Demolition, Hawaii

The 1998 demolition of Honolulu's Maluhia Hall—a uniquely Hawaiian, National Register-eligible building that showcased popular wartime performances such as Bob Hope's U.S.O. shows—serves as a reminder of why it is important for Federal agencies to initiate consultation early when planning an undertaking. This case demonstrates the lack of attention some Federal agencies give to opportunities under Section 111 of NHPA to find alternative purposes for historic properties that they are not using or do not plan to use.

Built in 1943 at Fort DeRussy in Honolulu, Maluhia Hall served American troops in the Pacific for more than half a century. From World War II to the Vietnam War, Maluhia featured historic performances for Armed Forces personnel, including U.S.O. shows hosted by Bob Hope. Eligible for listing in the

National Register of Historic Places, the building was built using typical World War II-era military construction methods but also featured many design elements unique to the style and climate of Hawaii.

In 1996, the U.S. Army proposed to demolish Maluhia Hall to create open space for the practice of Native Hawaiian cultural activities. That August, the Army submitted a draft Memorandum of Agreement to the Council for signature.

Because Section 111 of NHPA authorizes agencies to create alternative uses for historic properties they are not using or do not see a use for in the future, we responded by asking the Army to show that it had fully considered alternatives to its proposal. We also requested that the Army provide evidence that it had sought the views of interested Native Hawaiians and the public, pursuant to requirements of Section 106.

Without responding to these issues, in December 1996 the Army submitted a Memorandum of Agreement both it and the State Historic Preservation Officer had signed. Again, the Council declined to accept the agreement and encouraged the Army to examine alternative uses for the building and to seek public input about the proposed project. The Army then withdrew the proposed agreement.

Although the Army participated in a public meeting about the project sponsored by the Historic Hawaii Foundation, subsequent consultation proved unproductive and was terminated by the Army in December 1997. After the Council submitted formal comments to the Secretary of the Army, the Secretary restated the Army's determination and, in February 1998, demolished the building.

Philadelphia Naval Hospital Disposal, Pennsylvania

In 1999, the Philadelphia Naval Hospital—a complex that includes "one of the finest Art Deco buildings in the city"—was slated for demolition by the City of Philadelphia. (The city took over ownership of the



Maluhia Hall, or "haven of rest," at Fort DeRussy in Honolulu, Hawaii, featured wood-louvered doors and decorative cut-out panels depicting island motifs.

complex from the Navy under the Base Realignment and Closure Act.) Despite extensive consultation, the Council and the Navy could not agree on how to avoid or mitigate impacts on this National Register-eligible property. The planned demolition raises questions as to whether limiting the potential use of public sales inappropriately constricts the Navy's ability to fully take into account the effect of disposal on important historic properties.

"One of the finest Art Deco buildings in the city," was how one survey of Philadelphia architecture described the Philadelphia Naval Hospital's "Building 1," a 15-story, Art Deco-style tower faced with yellow brick and brown terra cotta. Since 1993, however, the entire National Register-eligible complex has stood vacant after the Navy relocated all of the complex's functions, and slated the historic buildings for closure and disposal under the Base Realignment and Closure Act of 1988. The act is designed to allow the military to quickly dispose of excess facilities designated for closure or realignment by Congress to local communities for reuse and economic revitalization.

The City of Philadelphia expressed interest in obtaining the parcel and prepared a proposed reuse plan for the property. The plan, which called for demolition of all structures on the site, was predicated on a belief that the historic buildings could not be economically reused and was developed before the property was formally determined eligible for the National Register.

Despite extensive consultation under Section 106, the Council and the Navy could not agree on how to avoid or mitigate impacts to the hospital complex. In April 1999, the Secretary of the Navy terminated further consultation and requested final comments from the Council.

To formulate those comments, Council Chairman Cathryn Slater appointed a panel of Council members representing the General Services Administration, the National Trust for Historic Preservation, and the Architect of the Capitol to review the case. Panel representatives and staff visited the site and met with consulting parties, interested citizens, and preservation groups. The panel reported that efforts by the Navy and the city to explore the feasibility of adaptive reuse were insufficient, notably due to the lack of any marketing of the

property. It recommended that the Navy reexamine its alternatives, including the previously rejected option of marketing for public sale.

The Council recommended that at minimum, before transferring the property to the city, the Navy should require the city to issue a Request for Proposal (RFP) to explore preservation of the complex's historic buildings. Although the final decision on reuse would rest with the city, issuance of an RFP would give this important resource one last chance for survival. The Council also urged the Navy to reconsider Navy Policy Memorandum #98-07, which set the stage for termination of consultation. The policy establishes principles to guide the Navy in complying with Section 106 for base closures. Although it emphasizes early consideration of historic preservation, the policy was issued well after the last round of base closures and, therefore, may not be effective in these situations.

This is a problem, since the same memorandum also establishes Navy policy against public sale of historic properties with preservation covenants when such sale would run counter to local reuse plans. This case, then, raises questions as to whether limiting the potential use of public sales inappropriately constricts the Navy's ability to fully take into account the effect of disposal on important historic properties.

In August 1999, the Secretary of the Navy responded to the Council's comments. Regrettably, the Secretary elected to accept only one of the three recommendations—to document the property before transfer and to make previously salvaged items available for reuse on the site. The Navy will not require the city to issue an RFP for development, nor revise its policy on Section 106 compliance for base closures.

The city plans to redevelop the razed site with market-rate townhouses, a nursing home and assisted living facility, a park, and a 1,100-space parking lot. More recently, the city proposed to



This detail from the Philadelphia (Pennsylvania) Naval Hospital's Building 1 suggests why it earned the distinction as one of the finest Art Deco buildings in the city.



The drum-shaped Cyclorama Building at Gettysburg, Pennsylvania was designed by Richard Neutra to exhibit a panoramic depiction of Pickett's Charge.

rezone part of the property adjacent to Veterans Stadium to permit development of a practice facility for the Philadelphia Eagles football team.

Cyclorama Building Demolition, Gettysburg National Military Park, Pennsylvania

The fate of the National Register-eligible Cyclorama Building confronted the Council with a particularly vexing challenge as it weighed the merits of two preservation outcomes: restoration of the historic landscape of Gettysburg, versus protection and continued use of a structure of architectural importance.

The issue, played out within the larger context of National Park Service plans to utilize a public-private partnership for development of a new visitor center, proved to be controversial, dividing the public between those who sought new strategies for meeting the fiscal and visitor needs of the park, and those who argued that such strategies could conflict with the park's historic values.

In 1999, the National Park Service inaugurated an extensive program of landscape restoration at Gettysburg National Military Park. It planned to construct a new visitor center and museum complex and to demolish the existing non-historic visitor center, as well as the Cyclorama Building, whose visitor center function was outgrown soon after it was constructed in the 1960s. With a drum-shaped exhibition theater, the Cyclorama Building was named for the 19th-century painting it was designed to exhibit: a panoramic depiction of the pivotal Civil War battle action, Pickett's Charge. (The painting carries the unique designation of a "National Historic Object" pursuant to the Historic Sites Act of 1935.)

The park favored removal of the structures, not expressly to make way for the proposed new complex, but to restore the historic landscape where the buildings stand, a site of important battle activity relating to the scenes depicted in the Cyclorama painting. In turn, the new visitor center and museum, which would exhibit the Cyclorama painting and house the park's extensive collections, would be located where research indicates there were no important battle-related events.

For Section 106 purposes, the park had reached consensus with the Pennsylvania State Historic Preservation Officer early in the planning process that the Cyclorama Building, like the existing visitor center, was ineligible for listing on the National Register. However, the Society of Architectural Historians challenged that determination. The Council referred the issue to the Keeper of the National Register, who determined that the property, built between 1958 and 1962, is exceptionally significant despite being less than 50 years old because of its association with NPS's "Mission 66" construction program and its architect, Richard Neutra.

Chairman Slater acknowledged both the importance of Gettysburg to the American public and the conflicts among competing resources by appointing a working group of Council members to provide policy guidance to Council staff. Members Bruce D. Judd, FAIA (expert member), Parker Westbrook (citizen member), and Herbert Franklin, representing the Architect of the Capitol, participated in site visits, consultation meetings, and discussions concerning the broader implications of the proposals.

In May 1999, the working group issued a report, *A Problem of Common Ground*, which endorsed the NPS proposal to remove the Cyclorama Building as part of its larger restoration of the historic battlefield landscape at Gettysburg. A copy of the report was formally transmitted to Secretary of the Interior Bruce Babbitt in light of the special interest he had shown in the matter. In her transmittal letter, Chairman Slater noted the unfortunate loss of the National Register-eligible Cyclorama Building as a consequence of the difficult decisions faced by the park.

Based on the policy direction set by the report, the Council consulted with the park, the Pennsylvania SHPO, and the interested public to develop a Memorandum of Agreement that provided mitigation

measures to help compensate for the loss of the Cyclorama Building and appropriate restoration measures for the historic battlefield landscape and the Cyclorama painting. The agreement also provides for later review under Section 106 of the proposed visitor center and museum.

Defensive Walls Rehabilitation, San Juan National Historic Site, Puerto Rico

The agreement on how to properly rehabilitate the historic defensive walls of the San Juan National Historic Site called for innovation, so the National Park Service convened an international team of conservation specialists to provide expertise within



Within the context of Section 106 review, an international team of conservation experts recommended ways to protect existing fabric and slow decay of the defensive walls surrounding the San Juan National Historic Site.

the context of the public Section 106 review. The technical problems associated with rehabilitating the historic walls around the San Juan National Historic Site require that the best principles of conservation science be applied. However, the significance of the property and its importance to the public also require that expert advice on treatment decisions be informed by public dialogue.

In 1997, the National Park Service began a project to rehabilitate the historic defensive walls surrounding the San Juan National Historic Site. In addition to being a unit of the National Park System, the historic district encompassed by the walls is listed in the National Register and, along with the adjacent fortress La Fortaleza, was designated a World Heritage Site in 1983.

After completing repairs and stabilization treatments, NPS proposed to cover the walls with a mixture of stucco and mortar. The Puerto Rico State Historic Preservation Officer objected to NPS's determination of no adverse effect for this aspect of the project, arguing that the stucco treatment would jeopardize the walls' structural integrity by trapping moisture. In addition,

the SHPO held that stucco would compromise the walls' visual integrity by covering and destroying the surface, which the SHPO considered an important character-defining feature because of its patina of age.

After the stuccoing project was initiated on the north wall, the Puerto Rico SHPO asked the Council to investigate the status of NPS compliance with Section 106. The questions this raised, coupled with evident physical problems with the stucco application, led NPS and the SHPO to enter into an agreement in January 1998 which detailed a plan of approach for addressing both the disputed north wall project and the remaining sections of the wall.

The Council supported the proposed conceptual approach. NPS and the SHPO included the Council as a full participant and, through the U.S. National Committee of the International Council on Monuments and Sites, allowed technical and philosophical issues to be explored by an international team of conservation specialists. The Council observed the meetings of the expert committee in June 1999, which included onsite inspections, presentations by NPS and the SHPO, review of documentary materials, dialogue with interested parties, and deliberations among the panelists.

The committee recommended specific methods and techniques to implement a program of minimal intervention which, while intensive, consist only of "those actions which will protect existing fabric and slow down decay." The recommended approach was deemed by the group to be the most respectful of the multiplicity of values associated with the site and the one that most effectively allows for the preservation of extant historic fabric.

As part of the January 1998 agreement in which NPS and the SHPO outlined measures to address the park's Section 106 responsibilities for this project, the Council is working further with NPS, the SHPO, and the interested public to develop a Programmatic Agreement for implementation of the interdisciplinary committee's recommendations.

Tustin Marine Corps Air Station Closure and Disposal, California

As part of the Base Realignment and Closure Act of 1990, the Tustin Marine Corps Air Station in California was identified for closure. The installation boasts two of the largest wooden buildings in the



This wooden dirigible hangar at Tustin Naval Base in California, built by the Navy during World War II to house patrol blimps, is among the largest wooden buildings in the world.

world: dirigible hangars built in WWII and listed in the National Register.

Besides involving such a rare type of historic property, this case also featured unique procedural problems. In an unprecedented action by the California legislature, the State Historic Preservation Officer was required to agree to the City of Tustin's assumption of the SHPO's

prescribed duties within the redevelopment project's survey area. The Council issued a legal opinion concluding that the State could not unilaterally delegate the SHPO's role and responsibilities under Section 106. The SHPO later rejoined consultation.

The Tustin Marine Corps Air Station is known for its two wooden dirigible hangars built by the Navy during World War II to house naval patrol blimps. Listed in the National Register since 1974, the hangars are recognized as among the largest wooden buildings in the world. In 1997, the installation was identified for closure under the Defense Base Realignment and Closure Act of 1990, which allows the military to quickly dispose of excess facilities to local communities for reuse and economic revitalization.

The proposed local reuse plan for the air station would redevelop a portion of it as a regional park to include one of the two historic hangars. Initially, however, the proposed new owner, Orange County, opposed accepting the property with any preservation restrictions that might hamper the development of a park master plan. The City of Tustin, acting as the Local Reuse Authority, also initially opposed the transfer of the property with preservation restrictions, and did not want to implement a marketing plan to identify interest in the second hangar.

When the Marine Corps initiated Section 106 consultation in 1997, the Council and the California State Historic Preservation Officer voiced concern over the fate of the hangars, but the Marine Corps suspended discussion on the case during 1998.

An unprecedented action followed: the California legislature enacted a law that required the SHPO to

agree to the city's assumption of the SHPO's prescribed duties within the redevelopment project's survey area.

At the request of the California Preservation Foundation (the statewide, nonprofit preservation organization), the Council issued a legal opinion concluding the State could not unilaterally delegate the SHPO's role and responsibilities. Under Section 106 at the time, a Certified Local Government such as the City of Tustin could only assume the SHPO's Section 106 responsibilities if the Council, the SHPO, and the local government agreed to it. (The issue later became moot, since the Council's 1999 regulations no longer provided for the delegation of SHPO responsibilities to Certified Local Governments.)

Following productive meetings between the SHPO and State officials, the SHPO rejoined consultation when the Navy reinitiated it. In December 1999, the Council executed a Memorandum of Agreement for the disposal and reuse of the air station. The SHPO was a signatory, despite earlier questions regarding his status due to the State legislation.

The MOA provided standards for marketing the station's historic blimp hangars and required that they be transferred with a preservation covenant if an economically viable, adaptive use is identified through the marketing. If either hangar should be transferred without a preservation covenant, the recipient will be required to document the hangar complex through a written history, the development of an interpretive exhibit, and the preparation of a professional-quality documentary video.

SPRAWL

Highway 31 Expansion, Michigan

Traffic congestion is getting worse in many places, but when the solutions to the problem threaten the character of a National Register-listed community, the responsible Federal agency and consulting parties must consider how best to mitigate adverse effects. Although Federal, State, and local agencies agree that seasonal traffic congestion is a serious problem for the historic Bay View community in the Lake Michigan resort town of Petoskey, Michigan, not all have agreed on the alternatives. Since traffic congestion is a significant condition within other Lake Michigan resort communities, it is hoped that the successful resolution of



FHWA proposes to construct a bypass to U.S. 31, shown here, that will adversely affect the rural historic landscape surrounding Petoskey, Michigan.



The proposed bypass, rendered above, would be built as a two-lane boulevard but have the potential to expand to four lanes in the future. Residents fear sprawl.

competing values in Petoskey, such as transportation needs, historic preservation, land use, and managed growth, can serve as a useful model for similar communities.

The Federal Highway Administration plans to assist the Michigan Department of Transportation (MDOT) with a road improvement project in Emmet County, Michigan. The project is intended to alleviate current and projected traffic congestion, especially through the National Historic Landmark community of Bay View in the City of Petoskey.

FHWA, MDOT, our agency, the National Trust for Historic Preservation, Resort and Bear Creek Townships, Emmet County, and other consulting parties agree that

seasonal traffic congestion in Petoskey is a serious problem affecting the Bay View NHL. There is also general consensus that the preservation of historic properties, particularly rural historic landscapes with their open space and vistas, is essential to maintaining the character of the Petoskey community.

FHWA widened US-31 in Petoskey in the early 1980s, but any further widening through Bay View has been prohibited by the courts. In order to examine other alternatives to deal with traffic congestion, Congress authorized Federal demonstration funds in 1987 to study a bypass and local economic improvement for the Petoskey area.

As a result of that and subsequent studies, FHWA proposes to construct a 16-kilometer bypass that will take US-31 south, around the City of Petoskey, into the surrounding, still predominately agricultural townships. FHWA proposes to phase construction of and control access to the proposed Far South bypass. Initially, it would be constructed as a two-lane, limited-access boulevard. However, FHWA would purchase right-of-way for expansion to four lanes in the future. FHWA also considered another alternative

located much closer to the City of Petoskey, but it was rejected by the city because of its significant social and environmental impacts.

If the Far South alternative is implemented, FHWA has determined that it cannot avoid adverse effects to several historic properties, including the Old Bear Creek Township Hall, the Four-Mile Clearing Historic District, and a newly proposed Resort Township rural historic district. In addition, FHWA acknowledges that implementation of the preferred alternative may, in the foreseeable future, affect other historic properties as well.

In particular, the local community is concerned that construction of the Far South alternative will encourage “sprawl” development, especially in the area surrounding the bypass. The City of Petoskey and Emmet County remain among the State’s most popular resort areas, and major new developments such as the Bay Harbor Development and the Crooked Tree golf course have already compromised the integrity of the rural landscape. This is a serious issue for the National Trust, which placed Petoskey on its annual list of the 11-most-endangered historic places in 1996 because of the threat of sprawl.

Some consulting parties, in particular Resort and Bear Creek Townships, support the improvement of local roads. Beginning in September 1997, the city, townships, and MDOT began meeting with State and Congressional representatives to examine possible local road alternatives. In February 1999, FHWA and MDOT agreed to prepare a supplemental Environmental Impact Statement for a new alternative called the Intertown Road alignment. This alternative, which focuses on using existing local roads, was determined feasible by FHWA and has been under study for the past year. FHWA plans to distribute the draft supplemental Environmental Impact Statement and conduct public hearings in 2000.

Woodrow Wilson Bridge Replacement, Virginia-Maryland

Construction of a new bridge across the Potomac River is imperative due to the ever-increasing Washington, DC, Beltway traffic and the deterioration of the current bridge, now nearly 40 years old. In its plan for a new bridge, the Federal Highway Administration was taken to court by historic preservation groups over several environmental and historic preservation laws.

The litigation raised questions about the Section 106 process' phasing of the identification of historic properties and assessment of effects, but a subsequent finding by an appeals panel upheld this frequently used, flexible approach to the regulations.

In cooperation with the Maryland State Highway Administration and the Virginia Department of Transportation, the Federal Highway Administration is planning to replace the only property it owns outright: the Woodrow Wilson Bridge. Spanning the Potomac River between Alexandria, Virginia, and Prince George's County, Maryland, the Wilson Bridge carries Interstate 95—also part of the Washington, DC, Beltway—and is one of the most critical transportation links in the metropolitan area. It is also a drawbridge, which must open approximately 200 times per year. The deteriorating bridge currently carries more than twice the volume for which it was designed in the 1960s, a situation further aggravated by the high volume of heavy truck traffic.

Since 1989, FHWA has looked at a number of proposals for replacing the bridge, and produced a Draft Environmental Impact Statement in 1991, followed by two supplemental Draft Environmental Impact Statements in 1996. The preferred alternative is a pair of side-by-side drawbridges on an alignment immediately to the south of the existing bridge.



A pair of side-by-side drawbridges is the preferred design for a new Wilson Bridge, which spans Virginia and Maryland over the Potomac River. (Drawing courtesy of Potomac Crossing Consultants and the Wilson Bridge Project)

Given the scale of the undertaking and its proximity to the Alexandria Historic District, a National Historic Landmark, as well as other National Register-listed or eligible properties, the project has been viewed as having an adverse effect under Section 106.

After several years coordinating with consulting parties, the Council executed a Memorandum of Agreement for the project in 1997. The MOA provided for a phased approach to identifying impacts in the project's area of potential effects. It deferred identification of a small number of ancillary activities until prerequisite engineering work can be

carried out during the final design process. The agreement was signed by State Historic Preservation Officers and transportation agencies from Maryland and Virginia; the National Park Service; the City of Alexandria; Prince George's County; and other consulting parties.

Although a signatory to the agreement, the city brought suit against FHWA for failing to comply with the Clean Air Act, the National Environmental Policy Act, the National Historic Preservation Act, and Section 4(f) of the Department of Transportation Act. The city later withdrew from the suit after reaching a compromise with FHWA in which the new bridge would be built to accommodate 12 lanes of traffic but initially would be marked for ten.

The intervenors in the lawsuit, however—including several local organizations and the National Trust for Historic Preservation—elected to continue the case. They won in a lower court ruling, which found that FHWA failed to complete its identification of historic properties under NHPA, including those that may be affected by construction staging, dredge disposal, or wetland mitigation. The judge also ruled that by failing to identify all properties prior to issuing a Record of Decision under NEPA, FHWA could not have undertaken “all possible planning to minimize harm” to historic properties as required by Section 4(f) of the Department of Transportation Act.

The lower court's finding that all reasonably foreseeable properties and impacts must be identified prior to a final decision by the agency had troubling implications for programmatic and process-oriented agreements that the Council routinely executes. Many such agreements are in place, which allow phased survey and identification, particularly in the case of large corridor projects that potentially involve many archeological sites.

FHWA appealed the decision, and the lower court's ruling was reversed by a Federal appeals panel. The unanimous opinion by the three-judge panel lets stand the 1997 MOA developed in accordance with Section 106 and the project to go forward as scheduled. The reversal of the lower court's ruling provided welcome support for the continued use of a frequently used, flexible approach to Section 106 compliance.

**Corridor H Highway Construction,
West Virginia**

First considered by Congress in 1965, the proposed construction of a 110-mile highway within West Virginia's Appalachian region is geared toward providing access and stimulating growth in the region. Because overall project approval preceded a full understanding of the historic properties affected by the undertaking, including two Civil War battlefields, the provisions of the agreement the Council executed with the Federal Highway Administration allowed phased compliance with the mandates of Section 106 as the project was developed section by section. The agreement also emphasized avoidance of those properties where feasible.

Corridor H, a proposed highway that would run for approximately 110 miles on new alignment, was first recommended by Congress in 1965 as one of 23 transportation corridors designed to stimulate growth and access within the Appalachian region. Preliminary



Strong participation by the public in the Section 106 review process prompted FHWA to develop an alternative less destructive to Corrick's Ford Battlefield and other historic properties.

cultural resource investigations within the proposed 2000-foot-wide corridor between Elkins, West Virginia, and the Virginia State line in Strasburg, Virginia, identified more than 1,000 structures or districts over 50 years old, of which only 12 were expected to be affected.

The Council executed a Programmatic Agreement for the project in 1995, after assurances from the Federal Highway Administration and the West Virginia Department of Highways that enough flexibility existed within the selected corridor to allow the highway to be relocated in most cases where adverse effects to historic resources might be expected. Because overall project approval preceded a full understanding of the historic properties affected by the undertaking, the PA allowed phased compliance with the mandates of Section 106 as the project was developed section by section. However, it also emphasized avoiding those properties where feasible.

Unfortunately, the information regarding historic properties upon which FHWA made preliminary project decisions proved to be unreliable, and this

has complicated project development. Intense public scrutiny, too, has highlighted the differences between State and national practice in evaluating which properties should be considered eligible for inclusion in the National Register and in assessing the nature of project effects. In 1998, the U.S. Court of Appeals for the District of Columbia ordered that FHWA be enjoined from constructing portions of the Corridor H highway pending resolution of a complaint brought under Section 4(f) of the Department of Transportation Act by a local citizens' group.

Meanwhile, consultants for the West Virginia Department of Highways presented an alternative based on a mitigation plan for sections of the highway adjacent to a Civil War property, the Corrick's Ford Battlefield. The use of raised roadway structures, narrow medians and shoulders, and retaining walls would virtually eliminate major cuts across the face of Fork Mountain, an important component of the battlefield. In addition, the West Virginia Department of Highways has begun evaluating alternatives to construction near another Civil War property, the Moorefield Battlefield, to avoid adverse effects.

In accordance with review provisions of the PA, the Council is now consulting with FHWA on the project's impacts to the two Civil War battlefields and other National Register-eligible properties.

NATIVE AMERICAN ISSUES

Imperial Mine Development, California

This project highlights potential conflicts between Section 106 and the Mining Act of 1872, which governs Federal regulation of private mining claims on public lands. In this case, the Bureau of Land Management (BLM) is reviewing a plan of operations submitted by a corporation for the development of an open-pit gold mine in eastern Imperial County, California. It is not clear, however, to what extent BLM has the ability to prohibit mining activities that have serious effects on historic resources, including a historic district called the Indian Pass-Running Man Area of Traditional Cultural Concern. The historic district is important to the Quechan Tribe for its role in the practice and transmittal of traditional religious and cultural beliefs.

The California State Office of BLM is reviewing a plan of operations submitted by Glamis Imperial Corporation for the development of an open-pit gold

mine in eastern Imperial County. The plan was submitted pursuant to the Mining Act of 1872 and in accordance with BLM regulations. The proposed mine, which would be located within the California Desert Conservation area, has three major components: a 1,571-acre mine and processing area; an ancillary area of 38 acres for water wells and utility corridors; and a 16-mile upgraded transmission line.

Cultural resource studies conducted by BLM identified numerous historic properties within the area of potential effects, among them the Indian Pass-Running Man Area of Traditional Cultural Concern, a historic district of central importance to the Quechan Tribe for its role in the practice and transmittal of traditional religious and cultural beliefs. BLM and the California State Historic Preservation Officer concurred that the area is eligible for listing in the National Register.



Among the historic properties within the mining project's area of potential effects was the Indian Pass-Running Man Area of Traditional Cultural Concern.

BLM proposed several measures to protect significant cultural features, including flagging them and erecting temporary barriers to keep heavy equipment from straying out of targeted construction areas; conducting archeological data recovery; withdrawing certain adjacent lands from mining;

and providing funding or materials to the tribe for educational and research purposes. The Quechan tribe contends that the loss of their traditional culture cannot be mitigated by the proposed measures.

The Council is involved in this case under the 1997 nationwide Programmatic Agreement for BLM undertakings. In recognition of the complex nature of this project, Chairman Slater appointed Native Hawaiian Council member Ray Soon and representatives from the Environmental Protection Agency and the National Trust for Historic Preservation to a working group to advise and direct Council staff.

At a six-hour, on-site public meeting in March 1999, more than 50 people spoke, a substantial majority opposing the mine. In July, representatives from BLM and Glamis met with the working group and staff at the Council's Washington, DC, headquarters. Glamis urged

consultation to find acceptable mitigation that would allow the project to go forward and later provided the Council with additional information on its cultural resource investigations for the proposed gold mine.

In spite of BLM and Glamis's proposed mitigation measures, the Council working group determined that the mine and its operation would unduly degrade the Indian Pass-Running Man Area of Traditional Cultural Concern by introducing activities and intrusions incompatible with the historic area, essentially resulting in the destruction of the Quechan tribe's ability to practice and transmit to future generations the ceremonies and values that sustain the tribe's cultural existence. In formal comments issued October 19, 1999, to the Secretary of the Interior, the Council asked that the Department of the Interior take whatever legal means available to deny approval for the project.

Mount Shasta Ski Area Construction and Operation, Shasta-Trinity National Forest, California

This eight-year case highlights the controversy that sometimes surrounds the consideration of a very large land form for National Register eligibility. Mt. Shasta is an imposing volcano, visible over a wide area of northern California and considered spiritually important to many Native American tribes. Local landowners and community leaders within the National Register-eligible boundary were up in arms, however, about the designation of such a large area, and even had congressional support through a bill introduced in the House of Representatives.

Such local community and political pressure made it difficult for the Forest Service and the Keeper of the National Register to accommodate the tribes' perspective on the National Register-eligible boundary. In the end, however, the well-orchestrated grassroots efforts of a community organization and consultation with Indian tribes regarding a proposed ski area, influenced the Forest Service's decision to prevent the ski area's construction in the National Register district.

In 1990, the U.S. Forest Service signed a Record of Decision approving a proposed ski area at Mt. Shasta, a large volcano visible over a wide area of Northern California. The proposed development would replace a ski area that was destroyed in an avalanche in the mid-1970s. The State Historic Preservation Officer had concurred with a Forest Service determination that no historic properties

were located in the area of potential effect. Soon after, however, the SHPO was contacted by representatives from local Indian tribes, who expressed concern about the spiritual significance of Mt. Shasta and how that significance might be affected by the proposed ski area. The SHPO requested the Forest Service to investigate these concerns, and the Forest Service began an investigation of Native American traditional use of Mount Shasta.

Based on the ethnographic study it commissioned, the Forest Service determined that Mt. Shasta is a landmark of major cosmological and spiritual importance to the Shasta, Modoc, Wintu, Karuk, Pitt River, and other Indian tribes as a place of considerable spiritual power. Places on the mountain, such as Panther Meadow, continue to be used for ceremonies. At the urging of the Council, the Forest Service requested a determination of eligibility from the Keeper of the National Register on traditional Native American use of the mountain. The Keeper found the entire mountain eligible as a Traditional Cultural Property (TCP) National Register district, because of its cosmological and mythological significance to these tribes. The district boundary comprised both Forest Service property and a considerable amount of privately owned land.

Intense public interest in the preservation of the mountain resulted in an “interested persons” list of more than 500 people and the inception of a “Save Mount Shasta” group. Another group, opposed to the large boundary designation, invited the Keeper to a public meeting in 1994. As a result of the meeting, the Keeper re-opened the boundary issue to additional public comment and, based on comments received and the Keeper’s determination that much of the mountain lacked integrity due to timbering activities, significantly reduced the National Register district boundary. While this change may have addressed the concerns



The Keeper of the Register found Mt. Shasta eligible for listing as a Traditional Cultural Property National Register district, because of its cosmological and mythological significance to numerous Indian tribes.

of local officials and landowners who had property within the original district boundary, the new decision was devastating to the tribes and Native American practitioners, who saw the reduction of the historic district boundary

as politically motivated and failing to take into account their perspective.

That same year, Council staff met with Forest Service officials and Native American representatives on how to proceed with Section 106 consultation on the proposed ski area. The Council also provided them with technical assistance on numerous occasions. The Council was especially concerned with the cumulative effect of permitting the ski area on Mt. Shasta, as the developer had produced a master plan for development of a ski village and year-round recreation in association with the ski area. In its subsequent comments to the Forest Service, the Council advised the agency to consider the possible impact of this related development on places of traditional cultural significance, both within and beyond the revised TCP district boundary.

In spite of the short-lived bill, H.R. 563—introduced in the House of Representatives in 1995 to amend the National Historic Preservation Act to prohibit “any unimproved or unmodified natural landscape feature which does not contain artifacts or other physical evidence of human activity” and specifically prohibit the designation of Mt. Shasta as a historic district, site, or national monument—the Forest Service revoked the ski area construction permit in 1998 before consultation to resolve adverse effects started.

Although the permit was revoked, Native American representatives remained dissatisfied with the TCP district boundary and were concerned with the Forest Service’s overall management of Mt. Shasta. The tribes and the Save Mount Shasta group requested the Keeper to meet with tribes, reconsider enlarging the National Register district boundary, and continue to press the Forest Service to hold consultation meetings to discuss the boundary and the need for a cultural resources management plan for Mt. Shasta. The Council has also encouraged the Forest Service to resolve these issues with the tribe and offered recommendations for future management planning.

Rowland Trust Estates Construction, Florida

Within the boundaries of the site of the most important battle of the Second Seminole War near Okeechobee, Florida, a developer has applied for a permit to build a residential subdivision. Since the 140-acre site—a National Historic Landmark—is privately owned, this project underscores the need for the integration of historic preservation considerations at the local planning level.

Consultation on this case must address the battlefield's importance to both the Seminole and Miccosukee Tribes as a traditional cultural property and sacred site. As proposed, the subdivision could strip the site of its National Historic Landmark status.

In 1961, the Okeechobee Battlefield in southern Florida was designated a National Historic Landmark as the location of the pivotal battle of the 1837 Second Seminole War. General Zachary Taylor won a decisive victory at the battle over the largest concentration of Seminole and Miccosukee warriors during the war.

The U.S. Army Corps of Engineers is reviewing a developer's application for a Section 404 permit to construct a 300-lot residential subdivision, called Rowland Trust Estates, on a key portion of the battlefield site—where the Seminoles were positioned during the battle.

In 1997, the Corps formally determined that the project would adversely affect the battlefield, and initiated consultation with the Council. The Council expressed concern for the importance of the site to the Seminole and Miccosukee Tribes as a property of traditional religious and cultural significance. Both tribes raised these concerns and others about development on the site, which may contain Indian burials. The Council also noted that the proposed residential development could strip this nationally significant property of its historical integrity, and consequently, its NHL status.

The threat posed to the site's integrity led the National Park Service to list the battlefield as a Priority 1 Endangered Landmark, a ranking generally reserved for NHL properties that are unlikely to survive for more than a few more years, because they have either been so severely damaged or are so imminently threatened.

After the Corps' reinitiated review of the project following additional project planning by the applicant, the Corps called a meeting to explore alternatives to commercial and residential development on the property, as required by Section 106. Council staff attended the meeting along with the Seminole and Miccosukee Tribes, the Florida State Historic Preservation Officer, Okeechobee County, Rowland Trust representatives, and a congressional representative. The meeting explored a variety of feasible alternatives to developing the land, including purchasing it for preservation, and setting aside a portion of the battlefield for commemoration and education.

South Lawrence Trafficway Construction, Kansas

In the mid-1960s, the buildings and historic cemetery of Haskell Institute, a Native American university in Lawrence, Kansas, earned the status of a National Historic Landmark. The designation, however, did not recognize the area south of campus to the Wakarusa River, historically part of the university, that contains properties of religious and cultural significance to the university community and more than 47 tribes locally and nationally.

Controversy surrounding the property's undesignated areas began nearly three decades later, when the Federal Highway Administration decided to fund construction of a four-lane county highway that would adversely affect not only the historic university but the adjacent culturally significant area that has yet to be formally evaluated for its National-Register eligibility and contribution to the NHL.

In the 1960s, Douglas County, Kansas, began planning a 14-mile highway on the periphery of the city of Lawrence. Called the South Lawrence Trafficway, the plan called for a four-lane, high-speed highway to link routes K-10, U.S. 59, and the Kansas Turnpike (I-70), to reduce congestion on local thoroughfares. In 1990, the Federal Highway Administration issued a Record of Decision under the National Environmental Policy Act to fund the project.

The project was split into two legs, and construction began on the nine-mile western leg. After several years of dispute regarding the environmental impacts of the five-mile eastern leg, the county withdrew its application for FHWA funding for that phase of the project. This led to two successful challenges in Federal court by students and alumni from Haskell Indian Nations University on the legality of FHWA's attempt to avoid compliance with applicable environmental laws. Pursuant to the court order, FHWA resumed environmental analyses of the proposed highway in February 1999.



Baker Wetlands, an area that was historically part of Haskell Institute, a National Historic Landmark, is of historical, cultural, and religious significance to the university community and many Indian tribes.

As part of that effort, FHWA initiated consultation with the Council, in response to the Council's determination that all three of the highway's proposed eastern leg "build" alignments would adversely affect the Baker Wetlands and the southern part of the Haskell Institute National Historic Landmark. Designated in the 1960s, the Haskell Institute NHL—significant as one of the first large off-reservation boarding schools for Indian students established by the Federal Government—contains numerous historic buildings from the boarding school period and a historic cemetery. Not evaluated for the NHL is the southern part of the campus, an open area where sweat lodges are used and a medicine wheel is located. Also important is the Baker Wetlands, a National Natural Landmark wetlands, historically part of Haskell, that is of historical, cultural, and religious significance to the university community and many Indian tribes.

The Council determined that the proposed "build" alignments would adversely affect the two areas with visual, noise, and atmospheric impacts and changes to their historic setting. Although FHWA determined that the southern part of the campus near the medicine wheel was eligible for the National Register, the Baker Wetlands has yet to be fully and formally evaluated for its National-Register eligibility and contribution to the Haskell NHL.

In May 1999, the Council participated in an interagency meeting and on-site visit to the NHL and the Baker Wetlands, and wrote to FHWA asking for additional studies of the wetlands that might contribute to the significance of the Haskell Institute NHL and have historical, religious, and cultural significance to both the university community and Indian tribes. The Council also requested that the National Park Service prepare a report pursuant to Section 213 of the National Historic Preservation Act to provide its updated perspective on the significance of the NHL, including the contribution of the Baker Wetlands, how the proposed project would affect the NHL, and what measures should be taken to avoid, minimize, or mitigate adverse effects of the highway. The National Park Service indicated that it would complete the report upon receipt of additional studies from FHWA to identify and evaluate the significance of the wetlands.

That October, FHWA, the Kansas Department of Transportation, Douglas County, and other cooperating agencies met with the Haskell University Board of

Regents to make a final attempt to win its unqualified support. At the Board's invitation, the Council made a presentation that emphasized FHWA's Section 106 responsibility to complete the process of identifying and evaluating historic properties, including the Baker Wetlands, that could be affected by the project, before developing mitigation measures. The Council emphasized the need for FHWA to consult with Indian tribes who attach religious and cultural significance to Haskell and the Baker Wetlands. Haskell students and a student organization opposed to the project also made presentations. After the meeting, the Board of Regents unanimously voted to reject the project.

Cushman Hydroelectric Project Relicensing, Washington

Concern with the effects of Tacoma's Cushman Hydroelectric Project on historic properties was but one of many environmental and cultural issues surrounding this Federal Energy Regulatory Commission relicensing process, which involved substantial public controversy, frequent disputes among the consulting parties, requests for rehearing and, ultimately, a lawsuit against the license applicant and the U.S. Government.

Sometimes Federal agencies may reasonably defer final identification and consideration of a project's effects to historic properties until after a licensing decision is reached. This case, however, demonstrates that if traditional cultural properties are present, the alternative selected by a Federal agency may make a critical difference in the ability of a traditional community to continue using such properties for cultural and religious activities.

From 1992 to 1998, the Council consulted with the Federal Energy Regulatory Commission on the Cushman Hydroelectric Project in Washington State. In the undertaking, FERC considered an application from the City of Tacoma to license the hydroelectric project located on the North Fork Skokomish River in Mason County.

The hydro project comprises two National Register historic districts. The Powerhouse No. 1 district includes a powerhouse and a dam impounding Lake Cushman and is significant as an example of 1920s-era hydroelectric technology of the American West. The Cushman No. 2 Powerhouse district is situated downstream on and adjacent to the Skokomish Indian Reservation. It includes a dam impounding

Lake Kokanee and is significant as an example of state-of-the-art high head hydroelectric technology from the early 1930s. It also includes an architecturally distinguished powerhouse, characterized by a monumental scale and Neoclassical design.



Penstocks are diverting water from the North Fork Skokomish River to Cushman Powerhouse No. 2. (Photo courtesy of Tacoma Public Utilities)

In addition, the project area includes a large prehistoric site located on the Lake Cushman shoreline and a chipped stone procurement site located in the drawdown zone of the Lake Cushman reservoir. A city

consultant identified 72 ethnographic sites of potential cultural significance within the Skokomish River/Lake Cushman drainage system, including three National Register-eligible traditional cultural property districts.

TCPs are generally determined eligible for the National Register for their association with cultural practices or beliefs of a living community rooted in its history and important in maintaining its continuing cultural identity. In this case, the three TCP districts were procurement sites, important to the Skokomish as places for community and family gatherings and harvesting shellfish; settlement sites, valued for food and non-food resources; and salmon fishing sites, vital to the tribe's past and present economy and cultural life.

Throughout the extended Section 106 review process, the Skokomish Indian Tribe and the city were at odds over licensing of the project, which has substantially reduced the flow of water in the North Fork and mainstem Skokomish River. The tribe asserted that their reservation and the traditional lifeways of its people have been severely affected by the river's alteration and operation of the project. The tribe proposed that the project should be relicensed only if the North Fork Skokomish River was restored to support anadromous fish. FERC and the city took the position, however, that the licensing process' environmental and cultural resource review should only consider the marginal impacts of changes from existing project operations.

Because of repeated objections to cultural resource studies and disagreements among the parties about the process, FERC terminated a 1994 Programmatic Agreement for the undertaking and soon thereafter terminated consultation with the Council. In its letter terminating consultation, FERC proposed it would require the city to finalize identification of TCPs after a license is issued. In response, Council Chairman Cathy Slater argued that the identification of historic properties and effects should be completed before a licensing decision. The Council urged FERC to adopt an alternative consistent with the recommendations, conditions, and prescriptions of the Departments of Interior and Commerce for substantial restoration of pre-project water flows to the North Fork and Skokomish River, and the inclusion of hatchery support and fish passage for the restoration of anadromous fish resources above the two project dams. The Council determined that these measures would best mitigate the adverse effects of the project on the TCP districts.

Issued in 1998, the project license included FERC's response to the Council's comments on the undertaking. The licensing order included a series of articles requiring the city to revise its Cultural Resources Management Plan to address recommendations for the evaluation and protection of archeological properties. The licensee was also required to increase minimum flow in the North Fork Skokomish River and to install and operate fish passage downstream and upstream from the project. It fell short, however, of fully adopting the recommendations of the Council, and thus raised questions about the viability of the adopted measures.

In 1999, the Skokomish Tribe filed suit for \$5.8 billion against the city and the U.S. Government for damages related to the project's construction and operation. FERC has stayed the license requirements until the courts can review the legal issues involved.

CULTURAL DIVERSITY

El Rancho Electric Substation Construction, New Mexico

By challenging orthodox views of what constitutes an historic resource, properties of traditional cultural significance can confront project planners and the Section 106 process with unique issues. As this case illustrates, such challenges are even more difficult to

resolve if the properties are identified after project decisions have already been made. Early outreach to affected communities is the most effective way to avoid these problems.

This unusual case resulted in the execution of an agreement for the treatment of effects of an electric substation in El Rancho, New Mexico, that had already been built on a traditional Hispanic dance site. Because of a court injunction against the substation's operation, the nearly completed \$1 million facility sat idle for eight years. The Council entered into consultation where it normally does not, to assist the Bureau of Indian Affairs and Rural Utilities Service in complying with a Federal court order to complete after-the-fact Section 106 consultation for the project. The Council also assisted the local community with resolving its concerns.

In 1989, the San Ildefonso Tribal Council and the Bureau of Indian Affairs (BIA) approved a lease with the Jemez Mountain Electric Cooperative to build a new electric substation on San Ildefonso Pueblo land near El Rancho, New Mexico. The one-acre substation would replace a nearby temporary facility. The Rural Electrification Administration (now the Rural Utilities Service or RUS) approved financial assistance for the project in 1990. Both actions were conditioned on the cooperative completing a cultural resource survey as required by Section 106, prior to the start of construction.

The cooperative began constructing the substation in November 1990 without the required survey. It was soon determined, however, that the construction created a significant visual intrusion to an adjacent National Register-eligible site where traditional Hispanic *matachines* dances are performed.

Although the Council contacted both RUS and BIA in early 1991, both agencies indicated an unwillingness to consider dismantling and/or relocating the substation because of the costs involved. The New Mexico State Historic Preservation Officer agreed with the Council that unless removal of the substation received serious consideration, meaningful consultation under Section 106 was impossible.

In 1991, *El Rancho La Comunidad de Tres Culturas*, representing the local community and users of the dance site, filed suit to stop construction. The district court judge issued a temporary restraining order to

stop further construction and ordered BIA and RUS to comply with the National Environmental Policy Act and the National Historic Preservation Act. The agencies completed an Environmental Impact Statement and, in 1997, issued a decision under NEPA, selecting the existing location for the substation.

NHPA compliance, however, remained unfulfilled. To assist RUS and BIA with the judge's order, the Council struck a compromise with the agencies. So that Section 106 consultation could proceed, BIA suspended its decision. Reversing its earlier position, BIA indicated a willingness to consider a full range of options for treating the adverse effects of the substation on the dance site, including locating the facility elsewhere. Consultation proceeded, but the consulting parties were unable to identify a reasonable alternative location. In 1998, the Council rejected BIA's first Memorandum of Agreement that called for construction of a large concrete screening wall on two sides of the substation, which did not fully address the concerns of the local community. That year Council members visited the site in conjunction with their quarterly business meeting, and staff subsequently met with the local community to explore other mitigation measures.

In 1999, the Council, the SHPO, BIA, and RUS executed a revised MOA for the project, concluding Section 106 review. The agreement included a clear statement objecting to the substation's location by the members of *El Rancho La Comunidad de Tres Culturas*; a requirement that natural earthen berms and vegetation be used to screen the substation from the dance site and the entry to the community; and a provision for \$7,500 to be made available to El Rancho to either improve an alternate dance location or to undertake other efforts to promote and protect the continuing vitality of the community's *matachines* dance tradition.

The agreement also called for additional consultation between the cooperative and El Rancho on the vegetative screening plan, and Council approval of the final plan and use of the \$7,500. While the local community remains opposed to the substation at its present location and declined to sign the MOA, the final document incorporated nearly all of the community's recommendations for screening the substation.

Allen Parkway Village Redevelopment, Texas
Community participation was critical to the development of a comprehensive mitigation plan for this project, which involved the redevelopment of a

National Register-listed public housing complex and an adjacent historic community developed by freed slaves in Houston, Texas. Consultation for this undertaking was complex given the objections of some residents to any redevelopment that would not preserve the housing complex in its entirety. The case also had to consider potential effects on archeological sites identified during preliminary testing, including human remains associated with a cemetery removed in 1941 to build the housing complex.



Allen Parkway Village, a circa 1941 public housing complex in Houston, before it was revitalized using HUD monies.



With its density reduced, mixed-income housing now attracts a more economically diverse population to the historic complex. (Photo courtesy of Housing Authority of the City of Houston)

the redevelopment project, the Department of Housing and Urban Development and other housing authorities now have a case study on the importance of consultation with tenant groups and the community when considering the fate of an historic public housing complex. For more than 25 years, the disposition of Allen Parkway Village, a National Register public housing complex built in 1941, was the subject of review by the Department of Housing and Urban Development. After receiving funds from different HUD programs, in 1994 the city submitted a demolition and disposition which triggered Section 106 review. The application called for the revitalization of the distressed public housing project. Redevelopment focused on reducing the housing complex's density and constructing mixed-income housing that would attract a more economically diverse population.

In December 1995, the Council executed a Memorandum of Agreement for the redevelopment project with HUD, the Texas State Historic Preservation Officer, and the Housing Authority of the City of Houston. Consultation focused on

direct and indirect effects to both Allen Parkway Village and the adjacent Freedmen's Town Historic District, a National Register community developed by freed slaves whose future was of considerable community concern.

The MOA had anticipated the discovery of burials in the project and, while the city was preparing for the new construction, contractors did encounter several sets of human remains. Under the terms of the MOA, the signatories developed a plan for the treatment of the remains, and the Council endorsed the plan's implementation procedures. However, in response to widespread community interest in this late-19th-century cemetery believed to contain remains of African Americans, Mayor Lee Brown instructed the housing authority to halt construction. Residents and preservation advocates objected to the proposed treatment plan and requested that the burials be left in place rather than removed and reinterred.

The city subsequently selected an option to remove and then reinter the remains on the housing complex's site. City archeologists analyzed and documented more than 400 human remains from the site, and a final report, prepared for the consulting parties and the community, will detail the results of the excavation and provide an overview of what the burials and associated artifacts reveal about the former cemetery. The remains will be reinterred in a cemetery created by the city in the northeast corner of the redevelopment project. This option did not affect the project design, as it used an area previously designated for a playground.

Rehabilitation of a portion of Allen Parkway Village that was to be preserved per the MOA has now been completed, and elderly residents are moving back into the section. The consensus among various segments of the community is that the redevelopment project has exceeded expectations.

PRESERVING THE RECENT PAST

Lauderdale Courts Renovation, Tennessee

In a case where the preservation of a celebrity's legacy meets modern housing concerns, Federal, State, and local housing agencies and historic preservation groups have come together to determine the fate of Memphis's Lauderdale Courts. The 1938 historic public housing complex, where Elvis Presley lived as

a teenager, no longer provides safe, secure, decent housing for its residents. The Memphis Housing Authority has initiated a renovation and demolition project for the complex.

The Memphis Housing Authority (MHA) has initiated a renovation and demolition project for Lauderdale Courts, a public housing complex located in downtown Memphis. Constructed in 1938 by the Public Works Administration, Lauderdale Courts originally contained 449 units in a mix of one- and two-story buildings arranged around courtyards and in two larger three-story buildings facing a major thoroughfare. Consistent with Federal policy and local law and custom at the time, Lauderdale Courts was constructed as housing for “whites only.” Architecturally, the complex is characterized by a simple, neo-Georgian form, but also exhibits flat roofs and certain Art Deco details.

Currently, the complex is in poor physical condition with many units boarded up, abandoned, or in need of significant repair. The overall site plan, however, retains all of its significant features and spaces. MHA is under pressure from the Department of Housing and Urban Development to improve conditions in the complex. MHA’s plan for Lauderdale Courts includes selective demolition of buildings in each courtyard grouping, renovation of certain units and “historic preservation” of others, removal of historic landscape features and their replacement with parking lots, perimeter security enhancements, and the demolition of the two three-story buildings.

The teenaged Elvis Presley lived in one of the three-story buildings after he and his mother left nearby Tupelo, Mississippi. During his residence from 1949 to 1953, Elvis received his first guitar and a neighbor taught him to play it. He practiced in the laundry room in the basement of this building and performed publicly for the first time with a group of residents as “The Golden Boys All-Guitar Band of Lauderdale Court.” As reported by the Associated Press and *People* magazine, there is a vocal, national constituency for preserving these buildings to demonstrate, in part, that there is more to Elvis Presley than Graceland—that in fact he came from a poor family and a life in public housing.

At a 1997 meeting in Memphis, MHA voiced its concern to the Council that local and national interest in

the former home of Elvis was taking precedence over the needs of the low-income, predominantly African-American residents and their need for safe



Built in 1938, Lauderdale Courts, a public housing complex in Memphis, Tennessee, is in poor condition, but the overall site plan retains its historic features. (Photo courtesy of Memphis Explorations, Tennessee)

and affordable housing. Local African-American Elvis enthusiasts and tour operators reported that tours are already stopping by Lauderdale Courts to see Elvis’s former home, and said they believe there are other options for the three-story buildings that MHA and HUD should consider before agreeing to the demolition.

The Council, MHA, HUD, the Tennessee State Historic Preservation Office, and interested parties agreed to a general time line that would allow MHA to secure funds from HUD for the overall renovation program, while not precluding the consideration of alternatives to the demolition of the “Elvis buildings.” The Memphis Landmarks Commission (MLC), the Certified Local Government preservation review board, would review and comment on detailed plans for the “non-Elvis buildings” part of the project in a public meeting. The meeting was held in 1998 after a special public outreach to Lauderdale Courts residents.

Following the public meeting, the Council, HUD, MHA, MLC, the Tennessee SHPO, and interested parties addressed how MHA and HUD would solicit, review, and select proposals for alternative uses of the “Elvis buildings.” The group agreed in principle to the terms of a Memorandum of Agreement, including a series of steps that MHA would take to market the “Elvis buildings” while the renovation of the housing on the rest of the site would go forward.

Section V

EDUCATING THE PUBLIC



Educational outreach, which fulfills Council mandates under Section 202(a)(5) and (7) of NHPA, remained a dynamic component of our mission during 1998 and 1999. The education program is linked closely to technical assistance and program review activities and instructs Federal, State, local, and tribal officials, applicants for Federal assistance, and contractors in the requirements of Federal historic preservation law and Section 106 review. The education program is a critical means of program improvement and preservation assistance.

AGENCY OUTREACH

In Fiscal Year 1998, regularly scheduled training open to the public was put on hold pending resolution of the Council's regulatory revisions. The education program instead focused on new partnership initiatives, preparing for transitional briefings on the anticipated new regulations, and providing Federal agencies with specially tailored training.

An ongoing joint initiative with the Navy and National Park Service provided Department of Defense personnel with four sessions of *Introduction to Cultural Resource Management Laws and Regulations* through the Navy's Civil Engineer Corps Officers School (CECOS). (CECOS reimburses staff instruction, travel, and other expenses associated with developing and updating instructional materials.)

Through a new interagency agreement with NPS, the Council also provided training for park managers and staff involved in Section 106 compliance. Under the agreement, NPS provided resources to develop and present a special course for NPS personnel to help them carry out their preservation responsibilities under the terms of the NPS nationwide Programmatic Agreement. In addition, we adapted the CECOS course for an NPS audience. This joint initiative is an excellent example of the integral relationship between training and the Council's goal of improving Federal agency historic preservation programs.

Another FY98 joint initiative enabled the Council to design and present a new briefing for the Army National Guard that addressed its dual Federal and State roles. Through our interagency agreement with the Army, the National Guard Bureau provided resources to design and offer a tailored briefing session for Army National Guard personnel. The Council also continued to work with NPS and a task force of Federal Preservation Officers (FPOs)

to establish a training program for FPOs and their staff. This multi-agency initiative will better equip FPOs to develop and implement effective agency preservation programs.

Regularly scheduled training also remained on hold in 1999, pending completion and issuance of the revised regulations and preparation of explanatory materials. As an alternative, we developed and presented a series of transitional briefings on the new regulations, while fulfilling responsibilities under existing partnership initiatives and providing several Federal agencies with specially tailored training.

By the end of the 1999 fiscal year, 1,585 people in nine locations had been briefed over an 11-week period. Forty-seven States, 33 tribes, two western Pacific islands, and the District of Columbia sent representatives to the briefings. One hundred and fifty-seven SHPO staff from 40 States and two western Pacific islands participated in nine additional follow-up workshops, and 42 representatives of 22 tribes attended three follow-up tribal workshops.

Special courses were also provided for NPS in the Pacific West Region and the Denver Service Center, and for Department of Energy personnel and contractors at Argonne National Laboratory.

Tailored briefings and workshops were presented for the Army at Fort Bliss; for the Department of Agriculture's Rural Development Agency; for the Midwest and Southeast Regions of the Federal Highway Administration (with State Departments of Transportation) and the American Association of State Highway and Transportation Officials' annual meeting; for NPS officials in Hawaii; for New Jersey, Virginia, and Pennsylvania SHPOs; for Oak Ridge National Laboratory; for municipalities and Federal and Commonwealth agencies in Puerto Rico; and at the Hydroelectric Utilities Roundtable on Cultural Resources in LaConnor, Washington.



Through an Interagency Agreement with NPS, the Council provides training for park managers and staff involved with Section 106 compliance. Here attendees participate in a case study exercise at Ft. Baker in San Francisco.

NATIVE AMERICAN OUTREACH

The 1992 amendments to NHPA introduced major new provisions that recognized historic properties of religious and cultural significance to Indian tribes and Native Hawaiians; provided formal means for Indian tribes to become full partners in the national program as Tribal Historic Preservation Officers; and required Federal agencies to consult with tribes and Native Hawaiian organizations in carrying out their Section 106 responsibilities. Our new regulations acknowledge these roles and clarify Federal agency requirements for consultation.

These legislative and regulatory changes followed passage of the Native American Graves Protection and Repatriation Act of 1990, increasing the visibility of Native Americans in Federal cultural resource matters and raising awareness of Federal agencies regarding Native American concerns. Although Native Americans have participated in the Section 106 review process for many years, the status accorded to tribes and Native Hawaiian organizations in the NHPA amendments dramatically increased the number of projects with Native American issues under our review.

Our participation in consultations involving Native American issues during this reporting period demonstrated the need for better communication among all participants: tribes, Native Hawaiian organizations, SHPOs, and Federal agencies, including the Council. The Council saw a need for greater involvement of Native Americans in Federal projects and programs that affected historic properties' religious or cultural significance. Our new Native American Program, coordinated by a senior staff member, was established to address these needs by providing outreach, developing policies and guidance that further the

purposes of NHPA and our regulations, and offering assistance with Native American consultation to all participants in the Section 106 process.

The first step in improving communication and developing relationships with Indian tribes and Native Hawaiian organizations was to open a meaningful dialogue about issues of concern, and the Council took a step in this direction at the business meetings in Santa Fe, New Mexico, and Honolulu, Hawaii. Council members and staff spent a day with the Governor, the Tribal Council, and staff at the Pueblo of Jemez, near Albuquerque, in November 1998. The tribal staff shared information about the pueblo's state-of-the-art cultural resource management program as a background for a general discussion of better ways to involve Indian tribes in Federal agency project planning. In February 1999, members met with Native Hawaiian representatives to learn about their culture and practices and how the Army worked with a Native Hawaiian community in activities scheduled at a firing range on Oahu. The Council also took the opportunity to explore concerns about and improvements to Federal agency consultation. Many of these ideas were subsequently integrated into policy and guidance initiatives.

With the new regulations in place, the program's focus has shifted to outreach to Indian tribes and Native Hawaiian organizations concerning revisions to the Section 106 review process. The Council held a briefing session for Native Hawaiian organizations in Honolulu, Hawaii, and tribal sessions in Albuquerque, New Mexico; St. Paul, Minnesota; and Seattle, Washington. Additionally, we met with the Executive Board of the United South and Eastern Tribes at the Oneida reservation in New York.

At the same time, the Council launched a policy initiative to address issues such as our government-to-government relationship with Indian tribes; the recognition of tribal sovereignty; tribal consultation; and respect for religious and cultural values.

INTERNATIONAL TRAINING THROUGH ICCROM

In 1998 and 1999, the Council continued to promote international training opportunities through involvement with the International Centre for the Study and the Preservation and Restoration of Cultural Properties (ICCROM), an autonomous, intergovernmental

organization charged with addressing the scientific and technical problems of conservation. Founded by UNESCO in 1959, ICCROM is headquartered in Rome. As defined by its statutes, ICCROM concentrates on five principal areas: documentation, research, recommendations, training, and promotion of awareness. Each year a jury of Council members chooses and recommends qualified American preservationists to participate during the reporting period. As defined by NHPA, the Council's role is advisory only; final decisions rest with ICCROM. Additional information about ICCROM and the Council is available at our Web site (www.achp.gov/iccrom.html).

COUNCIL WEB SITE

Over the past two years, the Council has taken advantage of Internet technology to provide educational opportunities for Section 106 users. The Council Web site, www.achp.gov, debuted in Fiscal Year 1996 with the objective of providing one-stop shopping for anyone wishing to learn about the historic preservation program established by NHPA. In addition to contact information for all State and Federal agency officials responsible for historic preservation under NHPA, the Web site contains material about pertinent preservation policies and programs and provides direct links to other useful Government agencies and organizations. The inventory of Council publications is available for downloading, including materials targeted to local governments, applicants for Federal assistance, Native Americans, attorneys, and the public. 1998-1999 additions include a "Users Guide to Section 106," presented in both Web and print-friendly versions, that spells out the process in detail, and an electronic gazette of current Section 106 cases that is regularly updated.

The potential of the Web site to educate the public was best illustrated through the outreach initiative for the Council's revised regulations. With www.achp.gov as a base, Section 106 users were able to track the regulations through the intricacies of the Government review process, from initial promulgation in the *Federal Register* through the lengthy period of interagency scrutiny under the aegis of the Office of Management and Budget. Once the regulations were published in final, users were able to download the full text in its official format and link to a series of new Council fact sheets that summarized the new procedures, outlined major changes to the Section 106 review process, and answered frequently asked

questions about the transition from the old regulations to the new. An interactive flow chart highlighted key decision points in the revised review process, while discrete e-mail accounts handled regulations-specific inquiries and enabled online registration for a nationwide series of transitional briefings. The Web material was supplemented by targeted mailings, so that individuals without Internet access could have the printed materials, and a staffed "Regulations Hotline" was set up to answer specific questions.

In Fiscal Year 1998, the Council brought maintenance and development of its Web site under its direct control. Plans for Fiscal Year 2000 include redesigning the site to make it even more user-friendly.

REPORT TO THE PRESIDENT AND CONGRESS OF THE UNITED STATES

In an effort to maximize the Council's limited resources and continue to meet statutory obligations, in 1995 we moved one of our principal tools for outreach, our annual report to the President and Congress, to a biennial schedule. This has facilitated more in-depth analysis of individual initiatives with a greater emphasis on outcomes and emerging themes. In 1997 we published *Report 1996-1997* in two formats, as a conventional printed publication and as an electronic document available at the Council's Web site.

This new approach to annual reporting does more than simply reduce production and distribution costs, though those savings are substantial. It enables global access to this important source of preservation information and permits readers to tailor its contents to their individual requirements. For example, persons familiar with the Council and the Section 106 consultation process might find sufficient information about recent agency achievements between the covers of the printed report. Individuals less experienced with the Council, on the other hand, can visit the links embedded in the online report for more information.

Experience shows that educating Federal agency officials and others saves significant time in processing Section 106 undertakings. It also improves consultation and results in better, more thoughtful planning and consideration of historic values. Through our training and publications, the Council endeavors to bring its message to the broadest possible spectrum of Section 106 users.

Section VI

CONCLUSION



General Post Office, Washington, DC

As the foregoing discussion makes clear, the past two fiscal years were signal ones for the Advisory Council on Historic Preservation. In 1998 and 1999, our internal reorganization and streamlining initiatives undertaken in previous years paid off handsomely.

Vigorous legislative and policy support ensured that national historic preservation concerns were considered by Congress; sustained outreach to Indian tribes and Native Hawaiian organizations brought two traditionally under-served communities under the Section 106 umbrella; and an increasingly sophisticated Web site acquainted an ever-growing audience with the Council's range of activities.

The Council's six-year regulatory reform initiative came to fruition during this reporting period. Implementation of new Section 106 regulations on June 17, 1999, formalized a more efficient and responsive approach to the protection of historic properties just in time for the new millennium. Giving greater deference to Federal agency-SHPO decision making and removing the Council from routine Section 106 reviews, the regulations have important implications for historic preservation in the 21st century. Not only do they enable us to focus on situations where our expertise and national perspective can enhance consideration of historic preservation issues but also shift our emphasis from individual cases to assessments of the overall quality of a SHPO/THPO's or Federal agency's performance.

Improving Federal stewardship of historic properties was a major focus in Fiscal Years 1998 and 1999. Using business meetings in Washington, DC; Miami, Florida; Alexandria, Virginia; Santa Fe, New Mexico; and Honolulu, Hawaii, to explore preservation issues associated with a variety of agencies, including the Department of Energy, the Army, the Navy, and the General Services Administration, members looked for ways the Federal Government could do a better job in the future. This focus led to the development of a special report to the President and Congress on that topic in conjunction with the White House Millennium Program. Scheduled for release in FY2000, the Council's Federal stewardship report will assess the challenges confronting Federal agencies that administer historic properties and make recommendations as to how their historic preservation efforts can be strengthened for generations of Americans.

With an active legislative agenda, improved communications, more effective constituent outreach, and new regulations, the Council enters the millennium ready to take advantage of new opportunities to protect and enhance the Nation's historic resources. These and the other initiatives discussed in *Report 1998-1999* make tangible its founding principle: to provide preservation leadership at the national level.

Appendices



APPENDIX A

Council Mission Statement

The mission of the Advisory Council on Historic Preservation is to promote the protection and enhancement of our Nation's historic resources. To fulfill this mission, the Council:

- Advances Federal historic preservation planning by ensuring that Federal agency policies and operating procedures adequately consider historic preservation laws and policies.
- Oversees the Section 106 review process to ensure that it functions smoothly and effectively for the nearly 100,000 Federal actions requiring review annually.
- Serves as mediator in more than 1,000 individual cases annually, between project sponsors and local preservation interests to protect important historic resources from unnecessary harm.
- Develops legally binding agreements in those cases among Federal, State, and tribal officials and other affected parties to clearly set forth the treatment of historic properties.
- Provides essential training, guidance, and public information to make the Section 106 review process operate efficiently and with full opportunity for citizen involvement.
- Recommends administrative and legislative improvement for protecting the Nation's heritage with due recognition of other national needs and priorities.

APPENDIX B

Appropriations Statement

	FY 1998 (final)	FY 1999 (final)
Personnel compensation	1,750,000	1,792,000
Personnel benefits	404,000	416,000
Travel and transportation	40,000	40,000
Rent, communications, miscellaneous charges	270,000	286,000
Printing	41,000	41,000
Other services	170,000	170,000
Supplies	5,000	5,000
Equipment	65,000	50,000
Total	\$2,745,000	\$2,800,000

APPENDIX C

Council Members, 1998-1999

Chairman

Cathryn Buford Slater (Arkansas)

Vice Chairman

Stephen B. Hand (Louisiana)

Expert Members

James K. Huhta, Ph.D. (Tennessee)
 Bruce D. Judd, FAIA (California)
 Arva Moore Parks McCabe (Florida)
 Parker Westbrook (Arkansas)

Citizen Members

Arthur Q. Davis, FAIA (Louisiana)
 Eugene A. Ludwig (Washington, DC)
 Margaret Robson (California)*

Native American/Native Hawaiian Member

Raynard C. Soon (Hawaii)

Governor

Honorable Angus S. King, Jr. (Maine)

Mayor

Honorable Emanuel Cleaver, II
 (Kansas City, Missouri)*

Federal Agency Members

Architect of the Capitol
 Secretary of Agriculture
 Secretary of the Interior
 Administrator, Environmental Protection Agency
 Administrator, General Services Administration
 Secretary of Transportation
 Secretary of Housing and Urban Development

National Historic Preservation Organization Members

Chairman, National Trust for Historic Preservation
 President, National Conference of State
 Historic Preservation Officers

**term expired during reporting period*

APPENDIX D

Council Professional Staff

(September 30, 1999)

Office of the Executive Director

John M. Fowler, executive director
 Ronald D. Anzalone, assistant to the executive director
 Charlotte M. Fesko, administrative assistant and member services

Office of General Counsel

Javier Marqués, assistant general counsel

Native American Program

Valerie Hauser, Native American program coordinator

Communications and Intergovernmental Relations

Sharon S. Conway, government relations and communications coordinator
 Elizabeth Moss, publications manager
 Stephanie A. Woronowicz, writer-editor and Web manager

Education and Training

Shauna J. Holmes, education coordinator
 Judith E. Rodenstein, training specialist

Information Technology Center

B. Marie Brown, director
 Brenda K. Bolden, office systems assistant
 Frances Gilmore, secretary
 LaShavio Johnson, computer assistant

Administration

Carol J. McLain, administrative officer
 Paulette Washington, office automation

Office of Planning and Review

Don L. Klima, director
 David E. Berwick, Army affairs coordinator
 Martha Catlin, historic preservation specialist
 Ralston Cox, historic preservation specialist
 Jane Crisler, historic preservation specialist
 Laura Henley Dean, historic preservation specialist
 Charlene Dwin-Vaughn, program analyst
 Connie Fox, clerk-typist
 Carol Gleichman, historic preservation specialist
 Michelle Heller, Army National Guard liaison
 Cornelia (Lee) Keatinge, program analyst
 Nancy Kochan, office administrator
 Tom M. McCulloch, historic preservation specialist
 MaryAnn Naber, historic preservation specialist
 Marjorie Nowick, historic preservation specialist
 Druscilla J. Null, program analyst
 Rebecca W. Powell, administrative assistant
 Alan Stanfill, program analyst
 Karen Theimer, historic preservation specialist
 Raymond Wallace, historic preservation technician

Executive Committee

Robert D. Bush, special assistant to the Chairman

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