



Preserving America's Heritage

CASE DIGEST: SECTION 106 IN ACTION



ADVISORY COUNCIL ON HISTORIC PRESERVATION

WINTER 2008

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

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Cover: Hangar 1, the historic dirigible hangar at Moffett Field at the NASA Ames Research Center in California, is one of the largest structures in the United States without internal supports.

ABOUT THIS REPORT

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

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

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

Each year thousands of federal actions undergo Section 106 review. The vast majority of cases are routine and are resolved at the state or tribal level, without the ACHP's involvement. However some cases present issues or challenges that warrant the ACHP's involvement.

This report presents a representative cross-section of undertakings that illustrate the variety and complexity of federal activities that the ACHP is currently engaged in. In addition, the ACHP's Web site www.achp.gov contains a useful library of information about the ACHP, Section 106 review, and the national historic preservation program.

CALIFORNIA

Project: Closed Case: Medicine Lake Highlands
Historic Properties Management Program

Agencies: U.S. Forest Service (lead), Bureau of
Land Management

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Medicine Lake Highlands

As a result of Section 106 consultation on a highly controversial geothermal development project in northern California, the U.S. Forest Service and Bureau of Land Management have developed a model program for the management of a Native American traditional cultural properties (TCP) district, one of the first such programs in the country. By working collaboratively, the two federal agencies and affected Indian tribes produced a Historic Properties Management Program that provides direction for the management of the TCP's resources, including specific goals for reducing or eliminating existing negative impacts.

While geothermal development in the Medicine Lake Highlands remains controversial and subject to litigation, the U.S. Forest Service (USFS) and a number of partners have moved forward in a positive manner to create a Historic Properties Management Program (HPMP). It details the significance of the Highlands as a Native American traditional cultural property district that is eligible for inclusion in the National Register of Historic Places, identifies desired conditions for the management of the highlands for cultural values, and details measures that can be taken to achieve those desired conditions. Especially interesting is the manner in which the report relates cultural values to environmental values, so that forest management of the highlands for cultural values is directly linked to maintaining the health of the forest ecosystem.

The Advisory Council on Historic Preservation (ACHP) has been involved in the effort since 1999. In 2000, the ACHP, USFS, Bureau of Land Management (BLM), and California State Historic Preservation Officer (SHPO) executed a Memorandum of Agreement (MOA)

regarding the proposed Fourmile Hill Geothermal Development Project. One of the mitigation measures contained in that MOA was a requirement for the USFS to develop an HPMP for the Medicine Lake Highlands regardless of whether the geothermal project was authorized by BLM and/or USFS. After years of consultation, and despite the geothermal project not yet being developed, USFS completed the HPMP on August 24, 2007. The Forest Service established the Medicine Lake Highlands Cultural Assessment Team (CAT) to collaborate in development of the HPMP. The team consisted of USFS and BLM agency staff and tribal representatives from the Pit River Indian Tribe, the Klamath Tribes, and the Native Coalition for the Cultural Restoration of Mount Shasta and Medicine Lake Highlands Defense (Coalition). Also involved in reviewing and providing guidance were the ACHP, BLM, and California SHPO staff.

The Medicine Lake Highlands is located within the Klamath, Shasta-Trinity, and Modoc National Forests, whose managers and officials oversaw the completion and approval of the HPMP. The historic district is eligible for listing on the National Register under criterion "A" as a cultural landscape. Many landscape features within the Highlands are associated with traditional Indian beliefs and practices, based in legends and origin stories. The northern portion of the Highlands was traditional territory for the Modoc Indians of the Klamath Tribes. The southern portion was, and continues to be, used for traditional cultural activities by the Pit River Tribe. The BLM's California state office was also involved in consultations and providing resources for development of the HPMP.

Key findings of the HPMP include the following:

- Establishment of an area of traditional cultural significance that encompasses approximately 73,000 acres of public land located within the central highlands;
- identification of cultural management objectives, desired future cultural conditions, and cultural management proposals that are largely consistent with the three forests' Land and Resource Management Plans; and
- identification of the greatest potential effects to cultural values in the highlands related to high wildland fire risks, diminishing structural and biological diversity, geothermal and mineral exploration and development, increasing recreational activities, and off-highway vehicle use.

The USFS views the HPMP as a living document that will be updated, as needed.

Footnote: Geothermal development plans for the area were opposed by the Pit River Indian Tribe and traditional practitioners from other American Indian communities. Litigation involving development of the Fourmile Hills Project was not yet resolved as the *Case Digest* was being prepared for print.

CALIFORNIA

Project: New Case: Hangar 1, NASA Ames Research Center, Moffett Field

Agencies: U.S. Department of the Navy, Department of Defense (lead); National Aeronautics and Space Administration; Environmental Protection Agency

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The fate of a historic dirigible hangar at Moffett Field is under consideration as a potentially precedent setting case involving the intersection of Section 106 and the Comprehensive Environmental Response, Compensation, and Liability Act as it moves toward resolution and action. This situation is particularly interesting as the object of the environmental cleanup is the historic property itself.

Hangar 1, individually eligible for listing on the National Register of Historic Places and a contributing element of the U.S. Naval Air Station Sunnyvale Historic District, is one of the largest structures in the United States without internal supports. Its floor area covers more than eight acres, and the clamshell doors and exterior metal skin are distinctive features of a 1930s hangar type. It was built in 1932 to house the airship U.S.S. *Macon*. For some time, the hangar housed the Navy's Lighter-Than-Air program. After this, the hangar was used for aircraft maintenance, training facilities, and office space. Depending upon the removal action alternative selected, there may also be impacts to the larger U.S. Naval Air Station Sunnyvale Historic District.

Due to provisions unique to the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), this case is not following the traditional Section 106 procedure.

Over the past few months, the Advisory Council on Historic Preservation (ACHP) staff have been in communication with the Navy regarding this CERCLA Non-Time Critical Removal Action and the Navy's



Hangar 1 was built in 1932; its floor covers more than eight acres.

responsibilities pursuant to Section 106 of the National Historic Preservation Act (NHPA) for the potential adverse effects to historic properties at the National Aeronautics and Space Administration (NASA) Ames Research Center.

CERCLA removal actions must comply to the extent practicable with the applicable, relevant, and appropriate requirements of certain other environmental laws. Because of the historic property at this CERCLA site, one of the location-specific applicable requirements identified in this case is Section 106 of the NHPA. Under CERCLA, the applicable requirements of the NHPA include those that are substantive, rather than those portions of the law that are procedural or administrative. Ensuring that interested stakeholders are given the opportunity to consult is an ongoing challenge.

Also involved in this case is the California State Historic Preservation Officer (SHPO). Other interested organizations include the National Trust for Historic Preservation and the Save Hangar One Committee. The Navy has requested the stakeholders' involvement in the process through upcoming public meetings, presentations, and review of the revised Engineering Evaluation/Cost Analysis (EE/CA).

The unique nature of the historic resource has drawn wide public, and some congressional, interest. In response to the public reaction to its original EE/CA draft, which provided the basis for the selection of the

CERCLA removal action, the Navy is developing a revised draft EE/CA that includes new cost figures for those alternatives deemed feasible. Currently, there are five feasible alternatives under consideration: cover the hangar with rubberized material, coat it with acrylic coating, cover it with new visually-similar siding, remove its siding and coat visible surfaces, and demolish and remove it. The Navy has contracted for a structural engineering study of the hangar to determine the feasibility of certain removal alternatives and whether it would need certain seismic upgrades. As such, the Navy says it currently has no recommended removal alternative pending the completion of this analysis. The Navy is attempting to re-engage interested stakeholders through comment and response on the EE/CA. The Navy has not yet announced a date for the release of the revised EE/CA.



The unique nature of the historic resource has drawn wide public interest.

DISTRICT OF COLUMBIA

Project: Ongoing Case: Lincoln Memorial Security Project

Agencies: National Park Service

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Following the terrorist attack upon the national capital area on September 11, 2001, the Advisory Council on Historic Preservation has been working with the National Park Service and others to develop security measures to protect important National Mall structures while preserving as much of the area's historic integrity as possible. Issues that arose in regard to security construction proposals at the Lincoln Memorial appear to have been successfully resolved.

In 2002, the National Park Service (NPS) began working with the Advisory Council on Historic Preservation (ACHP) and others to develop security measures to protect the Lincoln Memorial, located at the western terminus of the National Mall. The memorial is one of seven nationally significant monuments in the National Park System identified by the Secretary of the Interior as warranting such protections. In addition to the Lincoln Memorial, the Secretary identified two other exceptionally important sites to be protected in the nation's capital: the Washington Monument and the Jefferson Memorial.

A Memorandum of Agreement (MOA) for the Lincoln Memorial Security Project was executed in October 2003. By late 2007, initial phases of the project had been completed as approved pursuant to the MOA. New sidewalks and a 35-inch retaining wall now articulate the circular edge of the Memorial's side- and rear-facing fronts. Lincoln Memorial Circle, the roadway around the memorial, has been reconstructed, as well, for an overall effect that has been generally praised as a successful blend of security measures and enhancements to Lincoln Memorial Circle and the memorial's setting. Although the memorial's historic appearance has been altered to some extent, the additions do not diminish



Lincoln Monument (Photo courtesy National Park Service)

the memorial's significance and, importantly, do not overtly read as security measures.

However, on the east side, where the memorial faces the National Mall, previously proposed NPS plans, including installation of bollards across the National Mall front of the memorial at the Reflecting Pool level, prompted concerns from the ACHP and others because of the incompatibility of such features with both the National Mall and the memorial. NPS determined that effects would be adverse despite considerable effort on the part of NPS, the ACHP, the Commission of Fine Arts, the National Capital Planning Commission, and other Section 106 consulting parties toward making the security line less intrusive. In order to move forward on the final phase of the project, NPS decided to advance a plan that would only partially close the east side security line, removing the central portion from the East Side Barrier Project. This proposal, and its lack of information about how and when the central portion would be addressed, prompted concerns that existing makeshift measures, including unsightly jersey barriers in place since September 2001, could remain indefinitely.

On October 19, 2007, in light of the removal of the central portion from the project, the ACHP notified the NPS of its objection to the East Side Project as then proposed. In doing so, the ACHP joined with a number of the consulting parties, including the District of Columbia State Historic Preservation Officer, in

expressing the view that the project could be more successfully accomplished through a comprehensive and high quality design for the Lincoln Memorial grounds that would be integrated into the landscape of the National Mall. The nearby, completed security project for the Washington Monument provided a compelling example of a respectful and creative approach to anti-terrorist protections on the National Mall. Consulting parties urged equal consideration for the Lincoln Memorial. They noted that, for the Washington Monument Security Project, NPS hosted an invitational design competition that attracted proposals from premier architectural firms. The Lincoln Memorial Security Project, in contrast, had followed a less costly design/build approach. While the design/build approach did not prevent a positive outcome in the project's earlier phases, a drawback of the approach had become increasingly apparent—the most challenging phase had been left for last, leaving few options. In response to these concerns, and to the ACHP's formal objection pursuant to the MOA, NPS determined it would implement the proposed East Side Barrier Project as a partially reversible measure and seek funding for a permanent, high-quality comprehensive design that would replace an interim plan and become incorporated as compatible landscape improvements to the National Mall.

Secretary of the Interior Dirk Kempthorne voiced enthusiastic support for the new direction at the November 2007 ACHP business meeting. In recognition of the Secretary's interest in this matter, ACHP Chairman John Nau wrote to the Secretary on December 6, 2007, commending him for the exemplary work on the Lincoln Memorial Project to date, acknowledging the Secretary's intent to pursue the long-range project as a necessary part of that effort.

As the letter noted, "We applaud the Service's recent decision to proceed with caution and to limit for now any additional security treatments to temporary and reversible elements until a more comprehensive approach can be designed as an integrated part of the Memorial's setting. ... Your leadership, as the nation prepares for the bicentennial of Abraham Lincoln's birth, can make a critical difference in bringing about an outcome befitting the Memorial and the American people."

NPS's new proposal, which resolved the ACHP's concerns, depends on future funding that is not yet secured but that NPS has committed to pursue. The plan is consistent with the intent of the Lincoln Memorial Security Project MOA and also with the ACHP's emphasis in the Section 106 consultation process on the importance of reversibility for perimeter security projects of this nature. The proposed new approach would also present a renewed opportunity for NPS and consulting parties to evaluate applicable new developments in security standards, an evolving field as anti-terrorism security technologies continue to be researched and tested.

In January 2008, NPS, with consulting parties, proceeded to the next step in its interim plan and began to develop a proposal for the central portion of the East Side Barrier Project. Expected to be modest, the interim plan would serve as a placeholder for a future comprehensive design.

DISTRICT OF COLUMBIA

Project: Closed Case: Renovation of Old Department of the Interior Headquarters Building

Agencies: General Services Administration (lead); National Capital Planning Commission; Commission of Fine Arts

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The richly historic General Services Administration headquarters building, former home of the Department of the Interior, needed modernization and expansion without destroying its heritage and essential character. A successfully concluded Section 106 process resulted in a Memorandum of Agreement on December 19, 2007 assuring these goals would be met.

The U.S. Department of the Interior occupied the National Register of Historic Places-listed building, now serving as General Services Administration (GSA) headquarters, at 1800 F Street, NW from its completion in 1917 until 1937, a period significant in the department's history. Designed by architect Charles Butler, the building was executed in a restrained Neoclassical style, strongly rooted in classical architectural principles, including symmetry, proportion, scale, and order.

The programs and concepts of the National Park Service were conceived in the sixth floor offices of Interior Secretary Franklin K. Lane. The U.S. Geological Survey, the largest tenant in the building, first determined which public lands would be closed to development and conserved for their mineral and water resources here. In 1921-1922 the building was the focus of the "Teapot Dome" scandal involving Secretary of the Interior Albert Fall. Fall was convicted and imprisoned for accepting \$400,000 in bribes from oil magnates Harry F. Sinclair and Edward L. Doheny in return for secretly granting them rights to drill for oil on federal lands. It was here where Harold Ickes, Secretary of the Interior



Proposed infill for GSA headquarters, south elevation, 2007 (Shalom Baranes Associates, PC)

under Presidents Franklin D. Roosevelt and Harry Truman, oversaw construction of dams, fully developed the National Park Service to provide recreational needs, and served as the first Federal Administrator of Public Works.

The former Secretary of the Interior's office is now the office of the GSA Administrator, and has been meticulously restored. The Secretary of the Interior suite is the most elaborate space in the building. It includes a private office, passage, and restroom complete with full bath, as well as a public reception room. Distinguished decorative features in the Administrator's Suite include English oak floor-to-ceiling panels and a relief plaster ceiling. The fireplace of carved French limestone is one of the few such working fireplaces remaining in a federal building in the United States. In addition to this, the building's auditorium was the first such space in a federal building.

The building itself, appropriately to GSA's core mission as the federal government's landlord, was the first truly "modern" office building constructed by the federal government. It was also the first building designed for the specific needs of a designated federal department. Finally, it was the first federal building to use limestone facing as well as one of the first in Washington, D.C., to be constructed with steel framing. Occupying an entire city block in the northwest quadrant of Washington, D.C., it is an E-shaped structure with three wings of double loaded office corridors joined by a similar wing, or headhouse. In 2004, GSA embarked on plans for a major modernization of the building to include restoration of significant interior public and executive spaces; exterior repairs; elevator upgrades; mechanical,

plumbing, and life-safety improvements; perimeter security; changes to tenant spaces; and construction of an infill addition. Due to the sensitivity and historic character of the building, the construction of the infill required careful negotiations and agreements to achieve a compatible new design.

The building now is GSA's headquarters and its flagship building. GSA was very concerned about conducting a successful prototype for historic structure rehabilitation and modern construction integration in this special place. The goals were to demonstrate that a historic building could be successfully adapted to conform to a modern agency's requirements, including successful integration of new and sympathetic additions. The modernization of the interiors will permit greater flexibility in assuring that GSA's mission is successfully achieved, while preserving those elements that distinguish and contribute to the historic property's defining character.

Consulting parties included the National Capital Planning Commission, Commission of Fine Arts, District of Columbia State Historic Preservation Officer (SHPO), D.C. Preservation League, and the Committee of 100. The Advisory Council on Historic Preservation has been involved in the process since the fall of 2004.

The Memorandum of Agreement lays out a consistent building modernization process, complying with the Secretary of the Interior's Standards as fully described in a Preservation Program Report, developed among the consulting parties. The agreement allows for further design review and consultation in the development of appropriate perimeter security measures.

The greatest challenge was reaching consensus on an appropriate design for the infill. This component presented major compatibility issues with the historic structure. There was concern about the possibility of this becoming a precedent setting trend among federal properties in the nation's capital. The building typology of I-, H-, and E-shaped buildings is prevalent in Washington, D.C., and the desire to infill these courtyard spaces could result in projects that are disrespectful to the unique nature of these open court spaces. However, the transparency of the resulting

design, by the architects Shalom Baranes Associates, PC, while allowing for new and innovative use of space and materials, was the result of extensive Section 106 consultations by GSA with the consulting parties.

The negotiated mitigation includes preserving the historic corridor spaces to continue the historic flow patterns on each floor. Also, historic lobbies and floor treatments will be preserved. Exterior windows will be restored, and the central heating, cooling, and ventilation systems will eliminate eyesore window air conditioning units. The project will also integrate contemporary environmental sustainability requirements of the U.S. Green Buildings Council by pursuing Leadership in Energy and Environmental Design (LEED) certification for the new as well as the existing construction.

HAWAII

Project: Ongoing Case: NOAA Pacific Regional Center, Ford Island

Agencies: U.S. Navy (lead); National Oceanic and Atmospheric Administration; National Park Service

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A historic Navy site on Ford Island is being developed as the new Pacific Regional Center for the National Oceanic and Atmospheric Administration (NOAA). This project consolidates NOAA's administrative, laboratory, and support facilities in the region and at the same time assists efforts to preserve Ford Island by finding new uses for existing structures located within the U.S. Naval Base Pearl Harbor National Landmark Historic District.

This project involves the rehabilitation of five contributing buildings within the U.S. Naval Base Pearl Harbor National Historic Landmark District. Two of the existing structures are World War II-era airplane hangars that will be joined by a new building constructed between them.

As the rehabilitation of the five existing buildings will be carried out in accordance with the Secretary of the Interior's Standards and Guidelines, most of the consultation has focused on the design of the new middle building and the landscaping around the complex, which abuts the inactive Ford Island runway on the southeast side and the East Loch of Pearl Harbor on the northwest. The runway still bears marks from the Pearl Harbor attack by the military forces of the Empire of Japan on December 7, 1941.

The Navy and the National Oceanic and Atmospheric Administration (NOAA) have consulted extensively on this project to arrive at a new building design and landscaping plan that is responsive to the Navy's history here, to the Hawaiian ethos, and is as environmentally "green" as possible. Numerous teleconferences and on-site meetings have been held, and the Navy and NOAA



Map of Pearl Harbor (Courtesy NOAA)

and their contractors have been very responsive to the issues raised and suggestions from the consulting parties. These concerns have related primarily to the massing and exterior façade of the new building and form and plantings for the grassy area shielding the building from the new parking area.

Besides the three federal entities noted and the Advisory Council on Historic Preservation (ACHP), consulting parties included the Hawaii State Historic Preservation Officer (SHPO), National Trust for Historic Preservation, Historic Hawaii Foundation, Office of Hawaiian Affairs, and the Oahu Council of Hawaiian Civic Clubs. A Memorandum of Agreement (MOA) was signed in early February 2008, but aspects of the consultation process are ongoing.

This MOA contains design guidelines and provisions for continual design review of the new structure linking the two hangars, interior and exterior rehabilitation guidelines for the hangars and the other structures to be reused, and a landscaping plan for the grounds surrounding the buildings and for the new parking lot. An interpretative area will be created in the new structure that discusses the World War II role of these structures, and the history and cultural importance of Pearl Harbor and Oahu to Native Hawaiians.

Because Native Hawaiian human remains and cultural items may still lie in undisturbed parts of the site, an archaeological monitoring plan will be implemented, and the provisions of Native American Graves Protection and Repatriation Act will be implemented should human remains or cultural items be discovered.

ILLINOIS

Project: Ongoing Case: Future Uses for Buildings 42 and 521

Agencies: U.S. Navy

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While there has been positive progress and developments in the preservation efforts centering around two Modernist structures belonging to the Navy, the larger lesson underscored in the saga of Buildings 42 and 521 is the desirability of an installation-wide programmatic process rather than preservation on a piecemeal, case-by-case basis in order to better avoid and resolve issues.

This is an update to a *Case Digest* article in the winter 2007 edition regarding the Naval Installation Great Lakes, Illinois. Since the last digest entry, the Navy has agreed to make Building 42, also known as the Hostess House, available to the Navy Museum Association for reuse as a museum pending the association's securing certain fundraising levels to meet maintenance and renovation costs. This very positive outcome of consultation enabled the Navy to conclude the Section 106 process for this activity with a no adverse effect finding.

The Navy is still proposing to demolish Building 521 and states that a proposed reuse of the building as a food court and galley is no longer feasible. The consulting parties continue to discuss reuse alternatives; however, due to the Navy's footprint reduction initiative and changing training requirements and techniques, as well as the building's location, size, and the costs required to rehabilitate the structure, demolition of the building may still be a potential outcome.

Consulting parties include the Illinois State Historic Preservation Officer (SHPO); National Trust for Historic Preservation; Landmarks Preservation Council of Illinois (Landmarks Illinois); the Mies van der Rohe Society; International Working Party for Documentation and Conservation of Buildings, Sites and Neighborhoods of the Modern Movement



Building 521, the Gunners' Mates School, at the Naval Installation Great Lakes

(DOCOMOMO); Skidmore, Owings and Merrill LLP (SOM); and the city of Highland Park.

Building 521 is known as the Gunners' Mates School. Designed by Skidmore, Owings and Merrill in the Modernist style, it was built in 1952–1954 and served as a training facility on arms of many types and calibers through the use of simulators. At the time of its construction, the building was the largest steel and glass curtain wall structure in the world (a curtain wall is a non-load-bearing wall attached to the building's framework). It is considered by many to be a "gem" of the Modernist style of architecture and design. It is eligible for listing on the National Register of Historic Places.

The Navy hosted a public meeting on January 29, 2008 to examine viable, practical, and feasible options for utilization of this building, including but not limited to reuse, lease, rehabilitation, mothballing, disassembly and movement off base, disposal, and/or demolition. The Navy invited the public to propose feasible reuse alternatives for this discussion.

Section 106 consultation is ongoing for this proposed undertaking.

For more information: www.nsgreatlakes.navy.mil

IOWA

Project: Ongoing Case: Reclamation of former Iowa Steel and Iron Works Property

Agencies: Environmental Protection Agency; U.S. Department of Housing and Urban Development

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Reclamation of an industrial site as part of an economic redevelopment initiative is proceeding after creation of a Memorandum of Agreement containing protocols for handling archaeological sites if discovered.

The city of Cedar Rapids, Iowa, is the recipient of federal assistance for a project to reclaim the former Iowa Steel and Iron Works properties on the north and south sides of 12th Avenue SE between South 4th Street and South 5th Street as part of an economic redevelopment initiative project for the South-Side Neighborhood.

The Environmental Protection Agency (EPA) has provided two Brownfields Assessment and Cleanup Grants, and the Department of Housing and Urban Development (HUD) has provided three Economic Development Initiative Special Project Grants used to fund acquisition of sites, demolition, and site clearance. Both federal agencies are obligated to comply with Section 106 of the National Historic Preservation Act (NHPA) because of the funding they are providing. The city is responsible, as delegated by HUD, for carrying out compliance with Section 106 and other applicable federal authorities pursuant to the Environmental Review Procedures for Entities Assuming HUD Environmental Responsibilities (24 CFR 58) and the Small Business Liability Relief and Brownfields Revitalization Act (Public Law No. 107-118).

The city had some initial difficulties with the Section 106 review process. However, staff of the Iowa State Historic Preservation Officer (SHPO) worked to resolve a number of issues and assist in complying with NHPA. The South-Side Neighborhood, which is the focus of the undertaking, was from its earliest days the original Czech and Slovak community within Cedar Rapids.



Downtown Cedar Rapids (Photo courtesy Cedar Rapids Downtown District)

Archival sources and previous archaeological field investigations suggested there might be archaeological resources within the Area of Potential Effects. Initial testing determined only a portion of the property associated with the Iowa Iron Works had the potential to contain intact archaeological deposits.

Region VII of the EPA was reluctant to agree to development of a Programmatic Agreement (PA) to resolve the potential for adverse effects to historic properties, achieve compliance with Section 106, and allow release of the grant funds. Region officials believed a better course was to monitor during the brownfield cleanup and consult to develop a Memorandum of Agreement (MOA) if a historic property was identified. However, the SHPO would not agree to the use of heavy equipment for the cleanup if work was not pre-conditioned by the existence of an MOA or Programmatic Agreement that laid out thoughtful protocols for dealing with archaeological deposits if encountered. It is a standard procedure in Iowa to develop an agreement document prior to the use of heavy equipment for identification and evaluation of historic properties because of the nature of prairie soils. The transition between soil horizons is often subtle and hard to discern.

The Advisory Council on Historic Preservation (ACHP) initially declined to participate in the Section 106 consultation in December 2005. In response to inquiries from the SHPO and the city, the ACHP then sent a letter to the EPA in April 2007 indicating the EPA must execute an agreement document to resolve

compliance with Section 106 prior to release of project funds. After additional correspondence, the ACHP entered the consultation in September 2007. Working with the consulting parties, an MOA was developed that contained stipulations intended to deal with the testing that needed to be done in the remaining brownfield area of the undertaking. The city was designated as lead federal agency, acting on behalf of the EPA in fulfilling collective responsibilities under Section 106. This MOA was signed in January 2008.

LOUISIANA, MISSISSIPPI

Project: Ongoing Case: Retroactive Funding Under Hazard Mitigation Gulf Coast Grant Program

Agencies: Federal Emergency Management Agency, Department of Homeland Security

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As part of its assistance to hurricane recovery efforts in Louisiana and Mississippi, the Federal Emergency Management Agency (FEMA) will provide hazard mitigation funds to the two states. While existing statewide Programmatic Agreements (PAs) in both states address activities under FEMA's Hazard Mitigation Grant Program, the unprecedented nature of the situation following Hurricanes Katrina and Rita required FEMA to propose an exception to its normal rules and to execute a PA to address the agency's Section 106 responsibilities for activities funded through the exception.

The Federal Emergency Management Agency (FEMA) has executed a Gulf Coast Programmatic Agreement (PA) governing the review of projects receiving a limited exception through the agency's Hazard Mitigation Grant Program (HMGP) funds for activities in Louisiana and Mississippi. One of the goals of the HMGP is to enable communities to take steps in preparing for future disasters and minimize future losses. Hazard mitigation activities may include structural retrofit (e.g., roof clips, hurricane shutters); relocation of heating, ventilation, and air conditioning and mechanical systems; elevation or relocation of flood-prone buildings; reconstruction; or demolition of buildings for the creation of greenspace. Other examples of hazard mitigation work are drainage improvement projects and vegetative management programs.

Ordinarily, HMGP applicants and property owners who begin or complete work on their properties prior to receiving approval for HMGP are not eligible for such funds. However, because Hurricanes Katrina and



Port Sulphur, Louisiana, April 14, 2006 -- This is a "post" mitigated home that was raised up above the flood plain. The FEMA Mitigation program is designed to minimize loss through raising homes above the flood plain in flood-prone areas. (Marvin Nauman/FEMA photo)

Rita resulted in such widespread damage in Louisiana and Mississippi, FEMA received a waiver from the Office of Management and Budget allowing FEMA to issue retroactive funding approval for such work. The exception will make owners of damaged residential, commercial, public, and private non-profit properties eligible to receive HMGP funds for work already completed or for work begun by March 16, 2008. This date will mark the end of a 60-day grace period of limited Section 106 review requirements, which began upon FEMA's January 16, 2008 announcement of the exception. Historic properties owned by public agencies and private non-profit organizations are excluded from the grace period review benefit.

The Gulf Coast PA provides for a modified Section 106 review process for hazard mitigation activities already completed or underway by the end of the grace period. Under the Gulf Coast PA, FEMA will perform an overall assessment of cumulative effects to historic properties in the two states. The PA also stipulates that within 60 days of the agreement's execution, FEMA will begin consulting on state-specific PAs that will outline the process that FEMA and its grantees will use to comply with Section 106 for future HMGP activities.

In addition to FEMA, other signatories to the agreement include the Advisory Council on Historic Preservation, the Louisiana State Historic Preservation Officer, and the Mississippi State Historic Preservation Officer.

A concurring party involved in development of the Gulf Coast PA was the Mississippi Band of Choctaw Indians. The National Trust for Historic Preservation was a consulting party.

Since execution of the Gulf Coast HMGP PA in December 2007, FEMA has begun a wide-ranging public outreach effort to help educate HMGP applicants and property owners about alternative approaches to hazard mitigation activities that are sensitive to historic properties. As the *Case Digest* goes to print, FEMA is also beginning to consult with the two State Historic Preservation Officers, the Mississippi Band of Choctaw Indians, and the National Trust on the individual HMGP PAs for each state stipulated in the Gulf Coast PA.

MISSISSIPPI

Project: Closed Case: Programmatic Agreement for Hurricane Katrina Housing Response Efforts

Agencies: U.S. Department of Housing and Urban Development

Contact: Martha Catlin mcatlin@achp.gov

The Gulf Coast counties in Mississippi were severely impacted by Hurricane Katrina, and \$5.5 billion in Community Development Block Grant Disaster Recovery funds was made available to assist the state's recovery efforts.



Biloxi, Mississippi, September 3, 2005 -- Damage and destruction to houses in Biloxi, Mississippi, after Hurricane Katrina (Mark Wolfe/FEMA photo)

In response to Hurricane Katrina, the U.S. Department of Housing and Urban Development (HUD) allocated \$5.5 billion in Community Development Block Grant (CDBG) Disaster Recovery funds to the state of Mississippi. The Mississippi Development Authority (MDA) is administering the funds through the Homeowner Elevation Grant Program of the Homeowners Assistance Program and the Small Rental Assistance Program. The programs are designed to assist homeowners in the four Mississippi coastal counties affected by Hurricane Katrina.

On November 28, 2007, the Advisory Council on Historic Preservation (ACHP) notified MDA that it would participate in consultation with MDA and others to develop a Programmatic Agreement (PA) for the HUD-funded Hurricane Katrina response programs. In addition to the ACHP and MDA, participants included the following: the Mississippi State Historic Preservation Officer (SHPO), the National Trust for Historic Preservation, the city of Bay St. Louis, the city of Biloxi, the city of Ocean Springs, the city of Pascagoula, the city of Pass Christian, the Mississippi Band of Choctaw Indians, and the Choctaw Nation of Oklahoma.

Earlier phases of the HUD Katrina response programs had consisted of compensatory direct payments to applicants whose homes had been damaged. The Section 106 participants discussed consequences of

activities that homeowners had chosen to pay for with the HUD compensatory payments, and thought was given to whether and how such effects resulting from the earlier phases could be addressed in the PA. Though difficult to assess after the fact, these effects were acknowledged to include disturbance to archaeological sites and inadvertent loss of architectural integrity caused by activities, such as elevation of a home above anticipated future flood levels. As a result of the challenging circumstances of post-Katrina recovery, and the pressing need to move forward quickly to program implementation, the Section 106 process called for creative approaches to be considered by MDA, the ACHP, and consulting parties.

In consultation, the participants recognized that the relationship of mitigation measures to the program's adverse effects need not always be direct. A \$2.5 million mitigation fund was therefore established that would add more programmatic, or broad-based, measures to benefit the affected communities. Administered by the Mississippi SHPO, the fund will be distributed as grants through the SHPO's Hurricane Relief Grant Program and will assist property owners and others with the rehabilitation of hurricane-damaged historic properties. Concerns about the adequacy of proposed archaeological mitigation were also addressed through the grant program, which will be designed to fund archaeological survey, excavation, and purchase of property for protection of archaeological sites. The

grant program is also expected to fund development of public education products regarding archaeological, architectural, and neighborhood heritage in the four county area.

It is anticipated that owners of historic homes will be as likely to apply for funding to elevate their homes as owners of non-historic housing. Because elevation of homes can affect their historic character, the consulting parties wanted to ensure historic district commissions and homeowners would have the benefit of technical assistance in meeting the Secretary of the Interior's Standards for the Rehabilitation and Guidelines for Rehabilitating Historic Buildings (Standards). In fact, meeting the Standards is a local requirement for projects in the historic districts, and failure to meet them would result in denial of a building permit. Applications for funding from the HUD elevation program, on the other hand, would not be approved without a local building permit. It was agreed that technical assistance was critical if owners of historic homes were to be given fair and equal access to the HUD elevation program. Specific measures in the PA now ensure that such assistance will be made available to the commissions and owners of historic homes. As a result, elevation projects will be planned and implemented both to provide flood protection and to preserve the character of historic homes and historic districts.

Design guidelines, crafted to address the unique characteristics of each historic district, will be developed in consultation with, and for use by, historic district commissions and property owners seeking successful approaches for elevating historic homes above potential future flood levels. To facilitate this outcome, the PA requires MDA to immediately seek approval from HUD to enable MDA to approve elevation projects that may not fully meet the Advisory Base Flood Elevation Standard where a property owner prefers to strike a balance between the flood elevation standards and recommended historic preservation treatments.

WASHINGTON

Project: Closed Case: Port Angeles Graving Dock

Agencies: Federal Highway Administration, U.S. Department of Transportation

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This case was previously reported in the winter 2005, spring 2005, and summer 2007 *Case Digest* publications. The requirements of the amended Memorandum of Agreement for the project have been met.

On December 31, 2007, the Washington Department of Transportation (WSDOT) Maintenance Forces completed the last remaining item of physical remediation work at the Port Angeles graving dock site. This completes the requirements of the amended Memorandum of Agreement (MOA) for the project.

The next steps are to transfer the property to the Lower Elwha Klallam Tribe and the port of Port Angeles and to execute a lease with the tribe for a portion of the land. The negotiations on lease and deed language are ongoing, but the actual transfer of land to the tribe or the port are not requirements of the MOA. Rather, they are among the terms of the settlement agreements among WSDOT, the city of Port Angeles, the port of Port Angeles, and the Lower Elwha Klallam Tribe.



World War I-era warehouses (Photo courtesy U.S. Army)

WESTERN STATES

Project: New Case: West-wide Energy Corridors

Agencies: Bureau of Land Management; Department of Energy (leads); U.S. Forest Service; Department of Defense; U.S. Fish and Wildlife Service

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The Energy Policy Act of 2005 directed designation of corridors for pipelines and power transmission systems in 11 western states. The precise potential for adverse effects is unknown but appears to be large scale, considering the scope and areas under consideration. The Bureau of Land Management and Department of Energy have distributed a draft Programmatic Environmental Impact Statement that is part of the National Environmental Policy Act process, which they are using to fulfill their Section 106 responsibilities.

Congress passed the Energy Policy Act of 2005 in an effort to improve the reliability and enhance the capability of the national grid to deliver electricity. Section 368 of that Act directs the Secretaries of Agriculture, Commerce, Defense, Energy, and the Interior to designate corridors on federal land in 11 western states for oil, gas, and hydrogen pipelines, and for electricity transmission and distribution facilities. Proponents of future right-of-way projects are not required to use the Section 368 corridors, but the intent is to streamline the permitting process for projects within the corridors. The Bureau of Land Management (BLM) and Department of Energy (DOE) are fulfilling their Section 106 responsibilities using 36 CFR 800.8(c), which allows them to complete Section 106 through the National Environmental Policy Act (NEPA) process. A draft Programmatic Environmental Impact Statement (PEIS) was distributed for a 90-day comment period that closed on February 14, 2008. BLM and DOE hope to publish the Record of Decision, which will amend all the existing land use plans crossed by the corridors, in summer 2008.



This map denotes the proposed Section 368 Energy Corridors in 11 western states.

While the impacts of this undertaking are unknown, future projects have the potential to adversely affect historic properties and sites in the 11 designated states: Arizona, California, Colorado, Idaho, Montana, Nevada, New Mexico, Oregon, Utah, Washington, and Wyoming. BLM and DOE have proposed more than 6,000 miles of corridor, incorporating 3,700 miles of existing right-of-way, that covers nearly 3 million acres of land. Efforts are being made to avoid sensitive areas, but proposed corridors will cross federal lands that include national monuments, national parks, national wildlife refuges, national recreation areas, national conservation areas, national preserves, wild and scenic rivers, national trails, roadless areas, and wilderness areas.

BLM and DOE plan to complete their Section 106 process in a phased manner, starting with the PEIS and ending with project-specific Section 106 consultations when proponents make a proposal. The present PEIS will designate corridors, but the corridors to be used will not be known until an applicant files a request and the phased Section 106 process is completed.

Among the unknowns at this point are these significant issues:

- How corridors can be altered, if necessary, should historic properties be found at the time a proposal is made. There will be an obvious advantage to using the designated corridors, since that is where the streamlined permitting can take place.

- Federally designated corridors currently start and stop where the line clearly should pass onto private or tribal lands. It is not known what would result if those land owners do not allow the right-of-way to cross their lands.

The Advisory Council on Historic Preservation (ACHP) has advised BLM and DOE on the requirements of Section 106 as it relates to undertakings of this nature. Since BLM and DOE have opted to meet these responsibilities by integrating them with their NEPA efforts, the ACHP has provided comments on the draft PEIS that focused on the regulatory milestones that must be met in order to fully integrate these processes in accordance with the ACHP's regulations "Protection of Historic Properties."

For more information, see <http://corridoreis.anl.gov>.



Preserving America's Heritage

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