



Preserving America's Heritage

CASE DIGEST: SECTION 106 IN ACTION



ADVISORY COUNCIL ON HISTORIC PRESERVATION

SUMMER 2008

An independent federal agency, the Advisory Council on Historic Preservation (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.

John L. Nau, III, of Houston, Texas, is chairman of the 23-member council, which is served by a professional staff with offices in Washington, D.C. For more information about the ACHP, contact:

Advisory Council on Historic Preservation
1100 Pennsylvania Avenue NW, Suite 803
Washington, D.C. 20004
Phone: 202-606-8503
Web site: www.achp.gov

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Cover: The USS *Gage* is a decommissioned Navy transport ship docked at Fort Eustis, Virginia.

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 measures that the lead federal agency must take to ensure the protection of a property's historic values.

Each year thousands of federal undertakings go through 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.

ALASKA

Project: New Case: Creation of a Draft Programmatic Agreement for Roadway and Bridge at Knik Arm near Anchorage

Agencies: Federal Highway Administration, Department of Transportation

Contact: Charlene Dwin Vaughn
cvaughn@achp.gov

Proposed construction of a new roadway and bridge across a portion of the Knik Arm of Captain Cook Inlet to allow development is controversial for several reasons, including adverse effects on structures in the Government Hill Historic District and the potential for induced development to adversely affect historic properties.

At the request of the Federal Highway Administration (FHWA), the Advisory Council on Historic Preservation (ACHP) is assisting with the effort to draft a Programmatic Agreement (PA) guiding procedures on a complex and controversial undertaking requiring consultation among a broad spectrum of involved and concerned organizations.

FHWA, the Alaska Department of Transportation, and the Knik Arm Bridge and Toll Authority propose to construct a new roadway and bridge structure over the Knik Arm connecting the Matanuska-Susitna (Mat-Su) Borough with the city of Anchorage. The new roadway construction requires the demolition of several buildings in the National Register-eligible Government Hill Historic District and a cut-and-cover tunnel through the neighborhood. It also requires using land within Elmendorf Air Force Base (AFB) for the roadway.

The purpose and need for the roadway and bridge are based on the desire to encourage development in the Mat-Su Borough, which is currently impeded by a lack of accessibility.

There are a number of concerns with the proposal:

- The Alaska State Historic Preservation Office (SHPO) feels FHWA has not adequately considered the undertaking's potential for indirect effects,



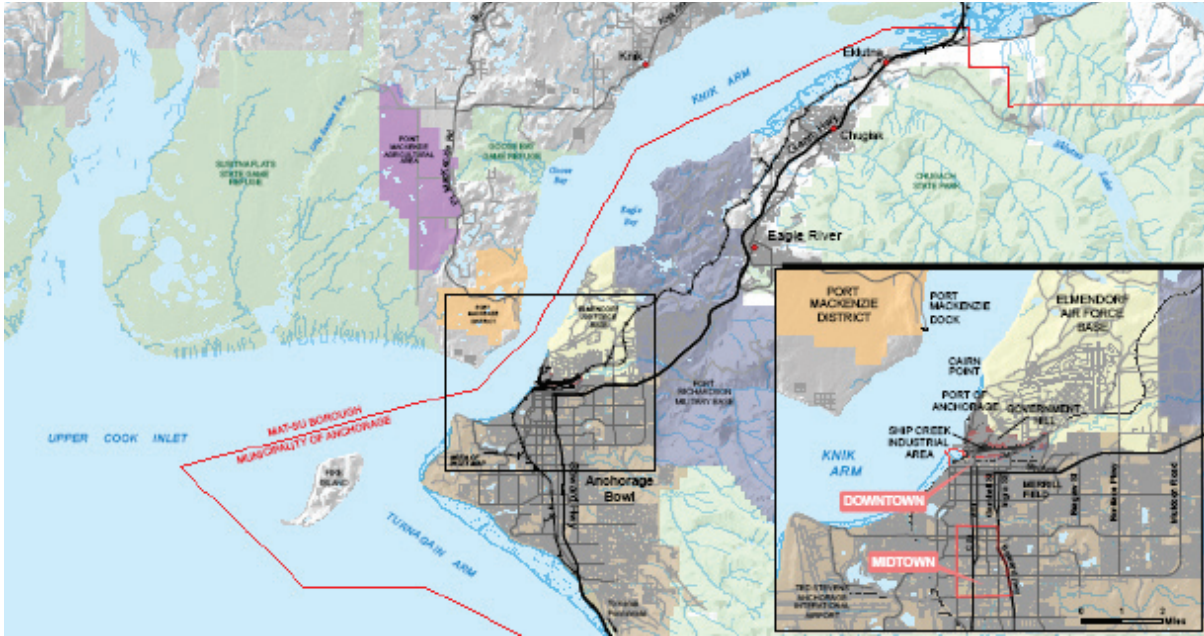
Alaska Engineering Commission Cottage on Government Hill

particularly those that would result from development resulting from the road and bridge.

- The Eklutna Native Alaska Corporation indicated that a National Register of Historic Places-eligible Traditional Cultural Property (TCP), a fish camp on Knik Arm within the boundaries of Elmendorf AFB, may be affected by the undertaking. The SHPO stated that the TCP was not eligible for the National Register.
- Government Hill residents object to the proposed demolition in and tunnel construction through their neighborhood.
- Commanders of Elmendorf AFB had refused to meet and consult with FHWA because they have expressed security concerns with the proposed roadway through their facility.

The ACHP was notified of FHWA's finding of adverse effects on historic properties and determined to participate in the Section 106 consultation in January 2007. ACHP participation was warranted because of the dispute between FHWA and the SHPO regarding the definition of the area of potential effects (APE) for the undertaking.

In June 2007, FHWA provided a draft Memorandum of Agreement (MOA) to the SHPO for review and comment. The SHPO objected because it failed to address potential effects on historic properties of induced development. No other consulting parties were consulted at that time. The ACHP advised FHWA to engage all consulting parties in order to resolve



The Knik Arm Crossing vicinity map shows the areas (inset) that would be affected by construction of the proposed bridge across the lower portion of the Knik Arm of the Cook Inlet. (Map courtesy Knik Arm Bridge and Toll Authority)

the adverse effects of the undertaking. In December 2007, FHWA issued its Final Environmental Impact Statement (FEIS) with a proposed alternative for the Knik Arm Bridge Crossing.

At the request of FHWA, ACHP staff visited Alaska in May 2008 and participated in a week of meetings with the consulting parties. Each meeting focused on a specific area within the overall project area: the municipality of Anchorage, Government Hill community, Elmendorf AFB, and Mat-Su Borough. In addition, a meeting dedicated to tribal issues was held. After having the opportunity to hear the concerns of all consulting parties, the ACHP summarized its preliminary recommendations to FHWA by highlighting three key themes: the “mile-high” view, the process, and seeking agreement.

The ACHP encouraged FHWA and the consulting parties to take a “mile-high” view when trying to understand and resolve the potential adverse effects of this large-scale project. Based on the nature of the undertaking and results of the induced development analysis presented in the FEIS, there are three APEs for this undertaking:

- Direct APE which is limited by the areas of proposed construction and related activities;

- Indirect APE which is limited by the areas that may experience the introduction of visual, atmospheric, or audible elements and/or changes in their setting; and
- Reasonably Foreseeable APE, which extends to areas north and south of the proposed project improvements into the municipality of Anchorage and Mat-Su Borough that may experience induced development as a result of the undertaking.

ACHP staff recommended FHWA and all consulting parties focus on developing a PA which sets the process that will be followed for continued consultation after FHWA issues its Record of Decision (ROD). This assumes there will be a continuing need for the parties to meet, discuss, and resolve a variety of issues as they mature. The PA, to be executed before issuance of the ROD, should not define the outcome of every conceivable future issue but determine the procedural framework within which issues can be resolved.

A draft PA was being prepared for circulation to all consulting parties as the Summer 2008 edition of *Case Digest* was being finalized.

CALIFORNIA

Project: New Case: Amendment to the Presidio Trust Management Plan (2002) for the Main Post Planning District

Agencies: Presidio Trust (lead), National Park Service

Contact: Katharine R. Kerr kkerr@achp.gov

The Presidio of San Francisco is a National Historic Landmark District listed on the National Register of Historic Places. When the Presidio passed out of Department of Defense hands in the mid-1990s due to a base closure process, this historic and cultural treasure located in a prime location in San Francisco became part of the Golden Gate National Recreation Area and became available for other uses, posing opportunities and challenges to an important heritage resource in the heart of a major city. The Presidio Trust was created as a governing body to determine and guide the fate and future of this resource.

The amendment to the Presidio Trust Management Plan (2002) for the Main Post Planning District is intending to accomplish four goals:

- Reveal the layers of Presidio history
- Add public amenities and services that support the Presidio as an urban national park
- Express a spirit of innovation
- Create relevant cultural experiences for all

There are a wealth of properties within the Main Post Planning District that contribute to the Presidio of San Francisco National Historic Landmark, which was listed on the National Register June 13, 1964, including the Main Parade Ground, Old Parade Ground, Montgomery Street Barracks, and the El Presidio (the original Spanish garrison).

The Presidio is historically significant for many reasons. It is considered the birthplace of San Francisco and incorporates the area first settled by the Spanish when a garrison was established in 1776. The U.S. Army established a post there in 1846 and operated it until it was closed under the Base Realignment and Closure process in 1994. Further, many persons significant to



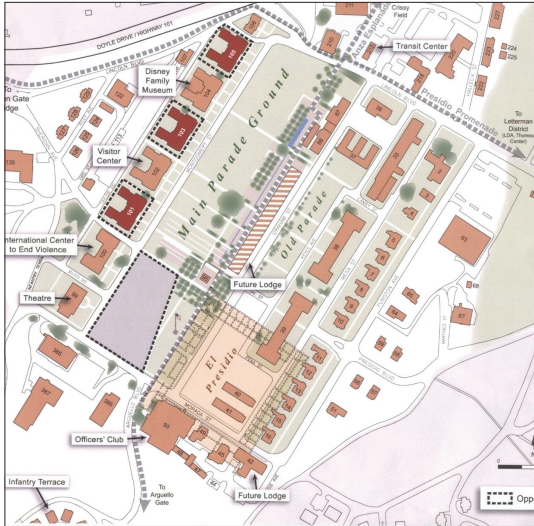
This aerial photograph of the Main Post Planning District at the Presidio of San Francisco is oriented with Doyle Drive/Highway 101 beginning at the left center bottom and running diagonally up to the right. (Illustration courtesy the Presidio Trust)

American history have lived at, visited, or been impacted by the Presidio, including Gen. John J. Pershing, whose family perished in a fire on the site.

Appropriately for such an important and highly visible heritage undertaking, there is an array of key players in the complex Section 106 consultation process at the Presidio. In addition to the Presidio, two subcomponents of the National Park Service are involved, namely the Golden Gate National Recreation Area (NPS-GGNRA) and the Pacific West Region. Other formal consultation organizations include the following: Office of Historic Preservation, California State Historic Preservation Office (SHPO); National Trust for Historic Preservation (NTHP); Presidio Historical Association (PHA); Sierra Club-Presidio Committee; National Parks Conservation Association; Descendants of the Anza and Portola Expedition; Cow Hollow Association; Laurel Heights Improvement Association; San Francisco Architectural Heritage; People for the Parks; and Neighborhood Associations for Presidio Planning.

The Presidio Trust has, over the past year, proposed numerous undertakings within the Main Post Planning District. It has combined these individual undertakings into a singular action for review, under Section 106, as an amendment to the Presidio Trust Management Plan (2002) for the Main Post Planning District.

A Programmatic Agreement (PA) exists between the Presidio Trust, the ACHP, SHPO, and the NPS-



The map of the Main Parade Ground is oriented with Doyle Drive at the upper left. The map highlights principal development sites on the Main Post Planning District. (Illustration courtesy the Presidio Trust)

GGNRA, regarding the Trust's various operation and maintenance activities under the Presidio Trust Management Plan (2002). Concurring parties to the PA are the NTHP and the PHA. The ACHP has informally been involved since December 2006 when it was notified of a proposed Presidio Lodge. Formal Section 106 consultation for the current activities began on December 12, 2007.

Amending the Presidio Trust Management Plan (2002) for the Main Post Planning District is perceived as a way to manage the currently proposed projects. It is worth noting the Presidio Trust is supposed to be self-supporting by 2013.

District-wide concepts for the Main Post Planning District include the following:

- Revitalize historic open spaces
- Animate Main Post Planning District with public uses
- Create a pedestrian district

Specific projects proposed include the following:

- Interpretation of El Presidio
- Restore landscaping along Funston Avenue
- Redefine the Old Parade Ground
- Restore the Main Parade Ground
- Construct a contemporary art museum
- Construct a lodge for overnight accommodations

- Construct a "Main Street" with the Anza Esplanade
- Rehabilitate the Presidio Theater, including an addition
- Utilize a Main Post Bluff as created by the Doyle Drive parkway undertaking (separate Section 106 undertaking)

There is great debate regarding many of these proposals including, but not limited to, the following issues:

- The location, size, style, and scope for the Presidio museum and lodge
- The type of cultural institution(s) appropriate within the Main Post Planning District
- The departure from the approved Presidio Trust Management Plan (2002) for the Main Post Planning District (i.e., increasing the new construction limit within the Main Post Planning District from 110,000 square feet to 265,000 square feet)

At this point the Section 106 process and the undertaking are extremely fluid allowing for changes to be made before the Presidio Trust establishes a final direction for the undertaking. It will most likely outline the consultation process for the specific suite of activities being proposed. Consulting parties are at a relatively early stage in the process of assessing effects, and no mitigation measures have been formally discussed as the *Case Digest* was being prepared for publication in early July 2008.

For more information: www.presidio.gov
www.nps.gov/prsf/index.htm

COLORADO

Project: Closed Case: Programmatic Agreement for 144 Miles of Interstate Highway 70 Corridor Improvements West of Denver

Agencies: Federal Highway Administration, Department of Transportation

Contact: Carol Legard clegard@achp.gov

Interstate Highway 70 is the major east-west corridor connecting Denver with many Colorado mountain communities and recreation areas. In April 2008, the Advisory Council on Historic Preservation executed a Programmatic Agreement with the Federal Highway Administration and other parties, establishing a set of principles and procedures for the consideration of effects to historic properties as more detailed plans for improvement are developed.

The Federal Highway Administration (FHWA) and the Colorado Department of Transportation (CDOT) are considering options for increasing capacity and reducing congestion on a heavily traveled mountain corridor along Interstate 70. The study area includes 144 miles of highway that cut through five counties and stretch from Denver to mountain communities in western Colorado. FHWA is conducting a tiered environmental review process for the undertaking.

The first tier is development of a Programmatic Environmental Impact Statement (PEIS) and Record of Decision (ROD) that selects a transportation mode (or modes) for future improvements along the I-70 mountain corridor over the next 50 years. As a result of coordination of Section 106 and the National Environmental Policy Act (NEPA) for this project, the Final Tier I PEIS will include a separate section summarizing and evaluating the relative effects of the undertaking on historic properties, reflecting input from the consulting parties. Tier 2 will be the development of additional, more detailed environmental review documents for the design and construction of individual segments of the corridor.

The existing highway cuts through several historic mountain communities. They include the Georgetown-



View of Interstate 70 approaching Idaho Springs. The Section 106 case regarding development of the transportation corridor associated with the interstate west of Denver is now closed.

Silver Plume National Historic Landmark District, with 384 individual historic properties, and the Georgetown Loop railroad grade between the towns of Georgetown and Silver Plume, which was considered an engineering marvel of the late 19th century. I-70 also goes through the Idaho Springs Commercial District and the Hot Springs Historic District in Glenwood Springs, which was developed between the 1880s and early 1900s as a resort. In addition, the I-70 corridor mountain communities in Clear Creek County are historically significant for their association with the development of the mining industry in Colorado.

The alternatives under consideration for the Tier 1 PEIS are all contained within the existing I-70 right-of-way. A Preliminary EIS was published for public comment in December 2004, and FHWA and CDOT anticipate reaching a decision on the project that may include additional traffic lanes and/or increased rail or bus service. Any alternative under consideration will likely have direct impacts on some historic buildings and structures, as well as noise and visual effects on historic districts. There are no known impacts to archaeological properties or historic properties of significance to Indian tribes.

FHWA and CDOT initiated consultation to develop a Programmatic Agreement (PA) with the State Historic Preservation Office (SHPO) and the Advisory Council on Historic Preservation (ACHP) in January 2005. Eventually, 19 signatories and consulting parties were identified, including the local governments and historic

preservation organizations from affected historic communities. The signatories are the ACHP, FHWA, CDOT, U.S. Forest Service Rocky Mountain Region, Bureau of Land Management Glenwood Springs Field Office, and the Colorado SHPO.

Concurring parties included Clear Creek County; Eagle County; Glenwood Springs; Georgetown; Silver Plume; Georgetown Silver Plume Historic District Public Lands Commission; National Park Service Intermountain Region; Colorado Preservation, Inc.; National Trust for Historic Preservation Mountain Plains Office; Colorado Historical Society; Historic Georgetown, Inc.; Historical Society of Idaho Springs; and Mill Creek Valley Historical Society.

After a rough start, CDOT hired a consultant to facilitate Section 106 consultation and develop the Section 106 PA. Interviews with individual consulting parties and two consultation meetings with all parties identified issues addressed in the PA. A final draft PA was completed in February 2006, but execution of the agreement was postponed until 2008 because of a delay in publication of the Final PEIS for the project.

Throughout consultation, local governments and historic preservation organizations in the historic mining towns opposed the most likely alternative, adding traffic lanes to I-70, because it would further contribute to increased traffic and noise pollution. These organizations strongly supported a multi-modal solution to the project, whose purpose is to reduce traffic congestion and increase capacity between Denver and popular recreation areas (including ski areas) along the corridor. In October 2007, CDOT invited 27 stakeholders to work with an independent facilitator to find a preferred alternative that best meets the needs of local governments; highway users; transit, environmental, business, and recreation interests; as well as state and federal agencies. This “Collaborative Effort” stakeholders group, which includes a representative of the historic preservation community, is close to reaching an agreement on a vision and specific recommendations for Tier 1: a multi-modal solution that includes non-infrastructure components, a commitment to evaluation and implementation of an Advanced Guideway System, and highway improvements. The Section 106 PA establishes a process for consultation during Tier 2



Interstate 70 at the Georgetown-Silver Plume National Historic Landmark (photo courtesy J.F. Sato & Associates)

undertakings, regardless of which alternative is selected in Tier 1.

What is unusual about the consultation process is that FHWA and CDOT have used a collaborative process to reach consensus among many stakeholders on the mode of transportation to be pursued in future smaller developments along the route. Also unusual is that FHWA and CDOT developed a PA addressing both Tier 1 and Tier 2 of a tiered NEPA review process in a manner that provides for the comprehensive consideration of direct effects as well as indirect and cumulative effects of the project on historic properties.

Direct physical impacts will be minimal, as all alternatives are within the existing right-of-way. The primary concern to consulting parties, and the focus of the PA and PEIS, are noise impacts, visual effects, and the cumulative effects of increased traffic on the economic viability of their communities as heritage tourism sites.

The PA includes a number of innovative measures to mitigate the effects of the project on historic properties. The final PA commits FHWA and CDOT to the following:

- plan, design, and implement the Tier 2 undertakings in accordance with the principles of Context-Sensitive Solutions (CSS);
- develop a historic context or contexts for the Mountain Corridor prior to implementing any Tier 2 undertakings;
- carry out consultation with the Section 106

consulting parties in designing Tier 2 undertakings, including a commitment to take into account direct, indirect, and cumulative effects on historic properties including measures to improve existing conditions affecting historic properties;

- follow negotiated guidelines incorporated into the PA for assessing physical, visual, noise, and economic impacts of Tier 2 undertakings on the historic districts; and,
- provide support for historic preservation efforts in the towns of Georgetown, Silver Plume, and Idaho Springs including assistance in identification and evaluation of National Register districts and evaluating contributing structures to existing districts beyond the area expected to be directly impacted by the project.

Although no archaeological properties were identified during a cultural resources inventory of the project right-of-way, the PA also provides for additional identification efforts in Tier 2. In separate consultations with Indian tribes having historic ties to the project area, FHWA and CDOT executed a PA with the tribes establishing protocols for tribal consultation on Tier 2 undertakings. The tribal agreement has been incorporated into the PA as its Appendix D.

The PA was executed on April 3, 2008; signed by all six agencies designated as signatories.

This PA should serve as an excellent model for early coordination of Section 106 and NEPA and for completing Section 106 consultations on large transportation projects involving tiered environmental documents.

For more information:

www.achp.gov/casessum05CO.html (Summer 2005 *Case Digest*)

www.achp.gov/docs/case_spring_07small.pdf (Spring 2007 *Case Digest*)

DISTRICT OF COLUMBIA

Project: Ongoing Case: Development of National Mall Plan

Agencies: National Park Service (lead agency), Commission of Fine Arts, National Capital Planning Commission, Smithsonian Institution

Contact: Kelly Fanizzo kfanizzo@achp.gov

The National Park Service (NPS) is developing a National Mall Plan to establish a common understanding about the future management of the National Mall and Pennsylvania Avenue National Historic Park, which has long been a topic of historic preservation concern as it continues to experience heavy use and a number of mandates for development and security. The NPS is in the process of developing an environmental impact statement under the National Environmental Policy Act with a concurrent Section 106 consultation process.

The National Park Service's (NPS) stated purpose for creating a National Mall Plan is to establish a common understanding about the future management of the National Mall and Pennsylvania Avenue National Historic Park.

The NPS seeks to address questions including the following:

- How can these places be protected and improved while sustainably accommodating very high levels of use—both numbers of visitors as well as First Amendment demonstrations and special events?
- What actions are needed to reverse the deterioration of the health and appearance of the historic landscape?
- What are the evolving places, roles, and symbolisms of these places for the country?
- How can they be adapted to many kinds of change?

The NPS intends the National Mall Plan to provide detailed guidance about mundane issues as well as establish a conceptual vision for the future. The NPS has



Consulting parties gather at the west edge of the Capitol Reflecting Pool while considering the National Park Service's National Mall Plan.

highlighted such goals as improved general appearance and signage, and improved access and quality of visitor services.

This is an extremely complex undertaking due to the nature of the historic resources, their unique governance situation, and their location in the most prominent portions of the monumental core of the nation's capital. Planned development and maintenance of the National Mall frequently is impacted by individual congressional mandates to place or develop certain specific additional elements on the Mall.

There are a significant number of historic properties within the area of potential effects (APE) for this undertaking, such as the 56 Signers Memorial, the Canal Lockhouse, the Capitol Reflecting Pool, the Constitution Avenue Corridor, the Japanese Lantern, Jefferson Pier, the Washington Monument, the Tidal Basin, the Reflecting Pool, and many others. There are also significant cultural landscapes, such as Constitution Gardens, Lincoln Memorial Grounds, and Union Square, as well as historic districts such as Downtown, East Potomac Park, Federal Triangle, and the Mall.

According to the NPS, "These places belong to all Americans and have many layers of symbolic, emotional, historic, cultural, and civic meaning. They are also symbols to people around the globe." They include cultural landscapes, historic districts, and features or elements listed or eligible for listing on the National Register of Historic Places.

There are many challenges that will be addressed in the Section 106 consultation. A number of consulting parties have expressed their belief in the need for a multi-agency approach to the National Mall for future planning. They argue that certain projects currently included in the alternatives for the National Mall Plan, due to their potential impact on the Mall, should not move forward without a multi-agency approach to cross jurisdictional lines in a more comprehensive fashion and encompass a broader vision for the area.

For more information:
www.nps.gov/nationalmallplan

The complexity of the undertaking is further evidenced by the number of consulting parties—at present about 30. Among them are the American Institute of Architects; American Society of Landscape Architects; Committee of 100 on the Federal City; Cultural Tourism DC; DC Preservation League; the Guild of Professional Tour Guides; Equal Honor for All; Martin Luther King, Jr. National Memorial Project Foundation, Inc.; National Coalition to Save Our Mall; National Mall Conservancy; National Parks Conservation Association; National Trust for Historic Preservation; Organization of American States; Trust for the National Mall; and others.

The National Mall Plan process was initiated in November 2006 with a press conference and symposia. Three newsletters have been issued, supplemented by public meetings and two rounds of public comment (November 2006 to March 2007 and December 2007 to February 2008). In January 2008, as draft alternatives were published, NPS initiated Section 106 consultation. Around 30 parties indicated an interest; many attended meetings in March, April, and May 2008. NPS hosted a May 2008 bus tour for a number of consulting parties and offered open discussion times to consult further on specific issues. A Section 106 component was added to the project Web site. NPS requested comments from the consulting parties in May 2008 to help shape the development of a preferred alternative for the National Mall. In June 2008 another Section 106 meeting was held to discuss Pennsylvania Avenue National Historic Park. Consultation will continue as the Draft Environmental Impact Statement (EIS) and Final EIS are completed and published.

At this point, the final Section 106 outcome is uncertain.

LOUISIANA

Project: Closed Case: Funding for the Recovery School District for Repair and Rehabilitation of the Andrew H. Wilson School and Demolition of Annex

Agencies: Federal Emergency Management Agency, Department of Homeland Security

Contact: Jeff Durbin jdurbin@achp.gov

The Andrew H. Wilson School is a contributing resource in the National Register of Historic Places-listed Broadmoor Historic District in New Orleans. The Federal Emergency Management Agency proposes to provide funds to the Recovery School District for its project to repair and rehabilitate the school, demolish a 1930 annex, and construct a new addition.

The Federal Emergency Management Agency (FEMA) proposes to provide Public Assistance funds to the Recovery School District (RSD) for its repair and rehabilitation of the Andrew H. Wilson School in New Orleans, Louisiana. The school was constructed in 1922 and is a contributing resource in the National Register of Historic Places-listed Broadmoor Historic District. RSD proposes to construct an addition to the school, which will necessitate demolition of the school's annex. Hurricane Katrina damaged the school and its annex in 2005.

RSD will rehabilitate the school according to the Secretary of the Interior's Standards for the Treatment of Historic Properties.

The school annex and the Gatekeeper's Lodge, both dating to 1930, are contributing resources in the Broadmoor Historic District, and will be demolished to construct the new addition compatible with both the Wilson School and surrounding Broadmoor Historic District. FEMA and the architect for RSD have worked with the Louisiana State Historic Preservation Office (SHPO) to design that addition. It also will be constructed so as to receive Leadership in Energy Development and Design (LEED) certification. The



The Andrew H. Wilson school will be repaired and rehabilitated by the Recovery School District in New Orleans through funding provided by the Federal Emergency Management Agency. (photo courtesy FEMA)

proposed project enjoys widespread support in the neighborhood and has been endorsed by the Broadmoor Improvement Association (BIA).

FEMA consulted with the Louisiana SHPO, the Advisory Council on Historic Preservation, RSD, the National Trust for Historic Preservation, and the BIA on a Memorandum of Agreement (MOA), which will address the adverse effects of the proposed undertaking. In addition to the proposed rehabilitation of the historic school and the compatible addition, FEMA's MOA includes the following mitigation measures:

- recordation of the historic buildings proposed for demolition;
- a process for addressing the inadvertent discovery of archaeological resources including FEMA's notification of Indian tribes about the discovery of human remains; and
- development of an interpretive display about the history of the school and the demolished annex.

For more information:

www.crt.state.la.us/culturalassets/fema106/readnotice.asp?NoticeID=83

NEW MEXICO

Project: New Case: Permits for Exploratory Uranium Mining Drilling on Mount Taylor, Cibola National Forest

Agencies: Forest Service, Department of Agriculture

Contact: Matt Thomas mthomas@achp.gov

Mount Taylor is an important and sacred mountain to many Indian tribes in the region and has recently been recognized as a Traditional Cultural Property that is eligible for the National Register of Historic Places. The Forest Service is considering four proposals for permits for exploratory drilling associated with uranium mining on Mount Taylor. There is considerable friction among the applicants, tribes, and other interested parties in the region about the proposed undertaking.

The Cibola National Forest (NF) is considering four proposals for permits for exploratory drilling for uranium in the area of Mount Taylor in northwestern New Mexico, near the town of Grants. At present, the Urex Energy Corporation has submitted a Plan of Operation to the Cibola NF for approval of exploratory drilling on La Jara Mesa to verify claims and validate previous results of drilling that occurred several decades ago. Three other plans of operation have been submitted within the same area of potential effects (APE). The Forest Service (FS) is considering combining all four proposals for a joint environmental analysis.

Consulting parties to date include the New Mexico State Historic Preservation Office (SHPO), Navajo Nation, Hopi Tribe, Pueblo of Zuni, Pueblo of Laguna, Pueblo of Acoma, Urex Energy Corporation (applicant), and the Advisory Council on Historic Preservation (ACHP). The FS plans to invite and recognize additional parties including local governments and land grant communities, representatives of the uranium mining industry, and interested environmental and historic preservation organizations. At present no agreements are in place; however, the outcome of Section 106 consultation to resolve adverse effects, which is at its



Mount Taylor, Cibola National Forest (photo courtesy Cynthia Benedict)

very earliest stages, should result in the development of a Memorandum of Agreement (MOA).

There have been several significant events to date in this case. Key events include the following:

- July 2007, the Cibola NF determined the Mount Taylor Traditional Cultural Property (TCP) eligible for the National Register of Historic Places.
- April 2008, the Cibola NF determined that proposed uranium exploration would have an adverse effect on the Mount Taylor TCP, to which the New Mexico SHPO concurred on May 6, 2008.
- May 9, 2008, the Cibola NF notified the ACHP of its finding of adverse effect.
- May 30, 2008, the ACHP formally entered consultation to resolve adverse effects for this undertaking.

Uranium mining has a long and widespread history in the region dating to at least the 1940s on the Navajo Reservation. Beginning with the discovery of uranium near Grants in 1950, mining has occurred near Mount Taylor for many years, including a large underground uranium mine that operated until 1990. Mining activities are thus fresh in the minds of many in the area, including advocates of such economic development in the region and those concerned about what they view as destructive effects of the boom and bust mining economy and the environmental impacts of uranium mining.

Mount Taylor is a prominent landform as one of the highest mountains in the area and is well known as an important place of religious and cultural significance

to a wide range of Indian tribes of the southwestern United States. It is one of the four holy mountains of the Navajo people and of the people of Laguna Pueblo, and holds comparable, but individually unique, importance to many pueblo communities as well. It has been determined as eligible for the National Register of Historic Places but has not been listed at this point.

There are very significant conflicts in this case. Generally speaking, on one side there are the uranium mining industry, local governments (town of Grants and Cibola County), and local land grant communities. On the other side are Indian tribes and environmental groups like the Sierra Club, with the SHPO and the FS as the agencies responsible for facilitating consultation, review, and decision-making. The conflicts are multi-faceted but now seem to revolve around four basic issues. They are the issue of jobs and economic development, the issue of protecting the mountain and environment, the issue of separation of church and state in public land management decisions, and the issue of control and balance in considering the role of the tribes and other parties in how the mountain is managed.

No meetings among consulting parties are scheduled as the *Case Digest* went to press in early July.

There have been a number of other meetings in the recent past regarding the larger issues. Most notably, a June 14, 2008, meeting of the New Mexico Cultural Properties Review Committee was held with more than 700 people in attendance. This meeting was called to provide for public participation and comply with state open meeting laws, after an earlier meeting on the issue of a temporary state register of historic places listing was ruled invalid by the New Mexico Attorney General for not providing the public with adequate notice. The earlier meeting was an emergency meeting called to consider and vote on a request for temporary one-year listing of the Mount Taylor TCP on the state register. At the initial emergency meeting, the committee voted 6-0 for the temporary listing. At the second meeting June 14, the vote was 4-2 in favor of temporary listing.

For more information: www.fs.fed.us/r3/cibola
www.nmhistoricpreservation.org

NEW MEXICO

Project: Closed Case: Memorandum of Agreement for Permian Basin Oil and Gas Development

Agencies: Bureau of Land Management

Contact: Nancy Brown nbrown@achp.gov

The Bureau of Land Management state office, the New Mexico State Historic Preservation Officer, and the Advisory Council on Historic Preservation have concluded an agreement that alters how the Section 106 process is conducted for new oil and gas development in the Permian Basin formations of southeast New Mexico.

The Bureau of Land Management (BLM) New Mexico state office and the New Mexico State Historic Preservation Officer (SHPO) have worked creatively to address adverse effects of gas and oil development in the state by developing new ways of thinking about how mitigation is accomplished.

The goal was to move from the traditional “flag and avoid” procedures of marking sites to safeguard them. This traditional practice has not produced a large volume of useful archaeological information over the years, and has provided little on which to base determinations of eligibility for listing on the National Register of Historic Places (NRHP). The new procedures will allow oil and gas developers to voluntarily pay a project-by-project financial assessment in advance into a mitigation fund. In return, BLM will no longer require archaeological inventories on those project sites but will use 75 percent of the funding to conduct focused archaeological investigations to develop better cultural resource information for the area. The remaining 25 percent of funds will be used to explore more creative mitigation approaches, including development of historic contexts, large-scale geomorphological mapping, and predictive models. An Advisory Workgroup will provide input on the design and implementation of the mitigation measures and will be made up of BLM staff, SHPO, Advisory Council on Historic Preservation (ACHP), New Mexico Archeological Council (NMAC), academic archaeologists with research interests in



Oil field development in southeast New Mexico's Permian Basin area (photo courtesy Bureau of Land Management, Carlsbad Field Office)

southeast New Mexico, representatives of Indian tribes, and representatives of the oil and gas industry.

The ACHP became involved in the project when the Section 106 process was conducted for new oil and gas development in the Permian Basin formations. New Mexico SHPO Katherine Slick requested the ACHP's advice and guidance in a June 7, 2007, letter. At that point the BLM and SHPO had been working on the Memorandum of Agreement (MOA) for more than a year. During the next 11 months the BLM, SHPO, and the ACHP worked through a number of additional drafts of the MOA. During the process, BLM consulted with the Pueblo of Isleta, the Mescalero Apache Tribe, the Comanche Indian Tribe, the Kiowa Tribe of Oklahoma, the Ysleta del Sur Pueblo, the Apache Tribe of Oklahoma, and the Hopi Tribe. In addition, the New Mexico Oil and Gas Association, the Independent Petroleum Association of New Mexico, and NMAC joined in the consultations.

PENNSYLVANIA

Project: Closed Case: Geigel Hill Road Bridge Programmatic Agreement

Agencies: U.S. Army Corps of Engineers, Philadelphia District

Contact: John Eddins jeddins@achp.gov

An 1887 bridge in Bucks County that had suffered extensive damage and deterioration will be replaced after Section 106 consultations determined restoration was not a practical solution, leading to a Programmatic Agreement among the most involved parties.

Geigel Hill Road Bridge located in Tincum Township in Bucks County was a single span Pratt pin-connected pony truss iron and steel bridge constructed with stone wing wall and abutments in 1887. Though not individually eligible for listing on the National Register of Historic Places, the bridge was a contributing element of the Ridge Valley Rural Historic District, which is listed. The bridge has been closed to vehicular traffic since 2001 due to safety concerns following a truck accident that damaged structural components. In 2008, the bridge was closed to pedestrian traffic as well because of its deteriorated condition.

A Section 404 permit was issued for the construction of a new bridge, which included demolition of the existing bridge. On April 23, 2008, the Advisory Council on Historic Preservation (ACHP) formally entered the Section 106 consultation for the replacement of the bridge. ACHP entry was in response to a notification received on March 28, 2008, indicating that the Philadelphia District of the U.S. Army Corps of Engineers (Corps), the Pennsylvania State Historic Preservation Officer (SHPO), and Pennsylvania Department of Transportation (PennDOT) all requested ACHP help with the Section 106 process.

Other consulting parties included the township, Tincum Township Planning Commission, Institute of Community Preservation, Tincum Creek Watershed Association, Lower Delaware Wild and Scenic



The Geigel Hill Road Bridge will be replaced after Section 106 consultations. (photo courtesy U.S. Army Corps of Engineers, Philadelphia District)

Management Committee, and local residents.

The ACHP determined its formal participation in the Section 106 consultation was justified because this undertaking had the potential for presenting procedural problems because of substantial public controversy related to historic preservation issues, with disputes among consulting parties which the ACHP's involvement could help resolve.

The Pennsylvania SHPO felt the Section 106 process had proceeded properly and also believed that the Corps and PennDOT had taken appropriate steps to accommodate the concerns of consulting parties. However, a number of consulting parties expressed a strong preference that the bridge be rehabilitated and preserved and not replaced. They did not feel the context of the historic district would be adequately preserved by construction of a new bridge, even if components from the original bridge were used in the construction of a new bridge. They further argued that safety and engineering standards should be altered in this case to allow for rehabilitation and preservation of the existing bridge. A number of consulting parties also believed PennDOT was exaggerating the public safety concern and the degree of degradation of the bridge. Consulting parties requested that the bridge be determined to be individually eligible for inclusion on the National Register. They also contended that the level of recordation acceptable to the SHPO was insufficient to document the details of this bridge.

PennDOT could not agree to rehabilitation of the

existing bridge because of its deteriorated condition. The Pennsylvania SHPO concurred with the Corps that the bridge was eligible as a contributing element of a historic district but did not merit individual eligibility. The bridge was of common design and had suffered loss of integrity of design, materials, and workmanship. The SHPO correctly noted that the lack of individual eligibility did not affect the treatment of the bridge under the Section 106 regulations. The SHPO also concurred with the level of documentation proposed by the Corps.

Ultimately, two main resolutions for the adverse effects of the undertaking on the bridge and historic district were considered. PennDOT proposed replacement of the existing bridge with one of modern design if PennDOT retained ownership and responsibility for the bridge. However, if the township took back ownership of the new bridge, it could be designed to more closely resemble the original bridge. The township and other consulting parties have had the opportunity to make comments about bridge design on numerous occasions. A PA was ultimately developed that incorporated the two main resolutions, depending on funding that would be available to the township. The Programmatic Agreement was executed on May 23, 2008.

VIRGINIA

Project: New Case: Disposal of the Decommissioned USS *Gage* Armed Transport Vessel

Agencies: Maritime Administration, Department of Transportation

Contact: Tom McCulloch tmcculloch@achp.gov

The decommissioned USS *Gage* is being disposed. The ship, constructed in 1944, served in World War II and is eligible for listing on the National Register of Historic Places, so the decision for disposal resulted in a finding of adverse effect for the vessel.

The Maritime Administration (MARAD) is disposing of the decommissioned USS *Gage*, a 1944 Haskell-class attack transport ship, which was basically an armed Victory-class merchant ship used for amphibious landings under enemy fire. The vessel has been in the National Defense Reserve Fleet (NDRF), a large group of non-combat vessels to be used in national emergencies and to assist the U.S. military in meeting its needs.

The *Gage* saw action in the initial amphibious landing on Okinawa in early 1945 and won one battle star for service in WW II. The vessel was decommissioned in 1947. In 1958, the *Gage* was transferred into the NDRF where it has been ever since.

When an obsolete vessel is marked for removal from the fleet, MARAD first tries to preserve the vessel by offering it to qualified public and non-profit organizations as memorials or floating museums. However, these recipients bear the costs of stabilizing and saving the vessel for display. Few have the resources to cover such costs. Hence, most of these vessels are either scrapped or sunk. For three years, the *Gage* was offered to the public through MARAD's Web site, through electronic mailings to organizations and individuals in the maritime history community, and others, but no organization was interested.

Consulting parties include the Virginia State Historic

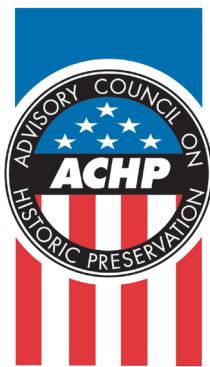


The USS *Gage* as it appeared in Cury, Japan, in October 1945 (photo courtesy the Few family)

Preservation Officer (SHPO), National Park Service's (NPS) National Maritime Heritage Program, the Historic Naval Ships Association, and the Advisory Council on Historic Preservation (ACHP), which became involved in May 2008. The Virginia SHPO is involved because the vessel is berthed at the James River Reserve Fleet at Fort Eustis, Virginia. A Memorandum of Agreement (MOA) was executed with the MARAD and the Virginia SHPO in mid-June 2008.

While the fate of the vessel has not been determined (either sold for scrap, used for naval target practice, and/or sunk as an artificial reef), the MOA calls for the *Gage* to be recorded, prior to disposal, in accordance with the Interagency Agreement between MARAD and the Historic American Engineering Record Branch of NPS, which will include development of measured, photographic, and written documentation. The ship's technical manuals and certificates will be preserved, and various components may be removed for use in other historic vessels. The mitigation plan was drawn up in consultation with the NPS National Maritime Heritage Program and the Historic Naval Ships Association.

When historic vessels are disposed, MARAD routinely removes various historical artifacts from them. Over the years, historical components of the *Gage* have been transferred to the museum ships USS *Slater* and USS *Massachusetts*, and to the Baltimore Maritime Museum for public display and to serve as replacement parts. As well, parts of the *Gage*'s sick bay are on display in the National Museum of Health and Medicine in Washington, D.C.



Preserving America's Heritage

ADVISORY COUNCIL ON HISTORIC PRESERVATION
1100 Pennsylvania Avenue NW, Suite 803 · Washington, DC 20004
Phone: 202-606-8503 · Fax: 202-606-8647 · achp@achp.gov · www.achp.gov