



Preserving America's Heritage

CASE DIGEST: SECTION 106 IN ACTION



ADVISORY COUNCIL ON HISTORIC PRESERVATION

SPRING 2011

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 Preserve America program.

Milford Wayne Donaldson, of Sacramento, California, 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

This report is available online at www.achp.gov/casedigest

TABLE OF CONTENTS

About this Report	2
Florida: New Case: St. Augustine Seawall Construction and Preservation.....	3
Guam: Closed Case: Guam Military Build-up.....	4
Hawaii: Case Update: Development of a High-Capacity Transit Corridor.....	6
Hawaii: Closed Case: Memorial on Kalaupapa National Historical Park.....	7
International: Ongoing Case: Keystone XL Pipeline.....	8
Kentucky/Indiana: Re-Opened Case: Louisville-Southern Indiana Ohio River Bridges Project.....	10
Louisiana: Closed Case: Louisiana State-Specific HMGP Programmatic Agreement.....	11
Multi-State: Ongoing Case: PA for Neighborhood Stabilization Program Funds.....	13
Multi-State: Ongoing Case: Solar Energy Draft PA and PEIS.....	14
New York: New Case: Papscaanee Island Railroad Construction.....	16
Pennsylvania: Closed Case: USS <i>Forrest Sherman</i> Proposed Dismantling.....	18

Cover: Tumon Bay, Guam, can be seen from a U.S. Air Force F-16D Fighting Falcon aircraft. The island territory will see an increase in population and activity after a realignment of military forces will move about 24,000 personnel there. (U.S. Air Force photo by Staff Sgt. Angelita M. Lawrence/Released)

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.

FLORIDA

Project: New Case: St. Augustine Seawall Construction and Preservation

Agencies: Federal Emergency Management Agency

Contact: Jaime Loichinger jloichinger@achp.gov

The old Avenida Menendez Seawall becomes a historic resource as a new seawall is constructed.

The City of St. Augustine, Florida, has applied to the Federal Emergency Management Agency (FEMA) for a Flood Mitigation Assistance grant for a project to reduce storm surge damage to the historic downtown area by constructing a new seawall just east of the existing Avenida Menendez Seawall. Construction of a new seawall to a height of 7.7 feet will preserve the existing seawall and eliminate the destructive flooding of most events up to a Category 1 storm surge.

The new seawall will be in front of the existing Avenida Menendez Seawall, which is individually eligible for the National Register of Historic Places under Criterion C – Architecture/Engineering. The following quoted material on the seawall comes directly from the City of St. Augustine’s Web site.

“St. Augustine’s seawall has been a fixture along the historic city’s Bayfront for generations. In fact, in 1690, when St. Augustine was well over a century old, citizens of the Spanish colonial town petitioned their king for funds to construct a seawall to protect their low lying community from daily tides and frequent storms.

“In the early part of the 19th century, when Florida was in its earliest days as a territory of the United States, West Point Army Corps of Engineers completed construction of the seawall south of the current Bridge of Lions. The section of the seawall north of the Bridge of Lions was extended outward into the bay in 1959 when Avenida Menendez, then called Bay Street, was widened to four lanes.

“Throughout its long history and various stages of development, the seawall has served the city and its



Castillo de San Marcos National Monument in St. Augustine is situated along Avenida Menendez. The Atlantic Ocean borders the east side of the fort. (photo courtesy National Park Service)

residents well by holding back the sea and protecting property from the eroding elements. But even with its great strength, it has had moments of weakness, most recently in the fall of 2001 when Tropical Storm Gabrielle washed out foundations weakened by previous storms and caused a breach in the wall. Within weeks, City of St. Augustine crews had repaired the wall, but there was the realization that a permanent reconstruction was needed to ensure the seawall service for future generations.”

FEMA is currently in the process of negotiating a Memorandum of Agreement (MOA). The MOA will document construction design measures, monitoring, and public interpretation materials that will avoid, minimize, and mitigate adverse effects.

The ACHP notified FEMA that it would participate in this case on December 29, 2010. An initial consultation meeting took place February 2, 2011, with subsequent sessions every two weeks. The goal is to have an MOA in place by the end of April 2011.

GUAM, TINIAN, CNMI

Project: Closed Case: Guam Military Build-up

Agencies: U.S. Navy (lead), Department of Defense, Federal Highway Administration, National Park Service

Contact: Louise Dunford Brodnitz
lbrodnitz@achp.gov

A realignment of U.S. military forces will add significant population and activity to the territories of Guam and the Commonwealth of the Northern Mariana Islands, with the potential to affect historic properties on Guam and Tinian. A Programmatic Agreement has been developed for case-by-case consultation to resolve direct effects to historic properties and address indirect and cumulative effects.

The Navy is lead agency for a project to relocate approximately 8,500 Marines and 9,000 dependents from Okinawa to Guam. This realignment will be partially funded by Japan under the Realignment Roadmap Agreement. In addition, the Navy will create a new deep-draft wharf with adjacent infrastructure ashore at Apra Harbor, and the Army will establish an air defense facility with 600 military personnel and 900 dependents. The proposed military realignment activities are in addition to ongoing efforts by the Air Force to increase capacity and personnel. The island of Tinian will see increased use for training by all military services. Overall, the military realignment effort on Guam is expected to increase the population by about 24,000 Department of Defense (DoD) personnel. It is further expected that DoD will increase its land holdings on Guam through purchase or lease. Construction on and off military land to accommodate the build-up will involve a temporary influx of civilian construction work force personnel and private development to accommodate the temporary construction workforce.

Historic properties within the area of potential effect for this undertaking include archaeological sites, traditional cultural properties, and architectural resources, spanning multiple periods of significance, including pre- and post-contact indigenous and relocated populations, occupation by a series of nations, and scenes of significant



U.S. and Japanese aircraft fly over Guam during exercise Cope North at Andersen Air Force Base, Guam, Feb. 21, 2011. The U.S. Air Force and the Japanese Air Self-Defense Force conduct Cope North annually at Andersen Air Force Base to increase combat readiness and interoperability. (U.S. Air Force photo by Staff Sgt. Angelita M. Lawrence/Released)

wartime operations. Historic properties are expected to be affected through DoD construction, operations, roadways and utility upgrades, or reduced access, both on military-controlled and state and private lands. Private development projects to accommodate residents on Guam and the Commonwealth of the Northern Mariana Islands (CNMI) will require review by each island's Historic Preservation Office (HPO). These activities, coupled with the ongoing Section 106 review for this undertaking, will result in an increased workload for HPOs. Concern exists that the increased workload may significantly exceed their capacity.

In order to take into account effects of these activities on historic properties, the Navy consulted with the ACHP, the HPOs of Guam and CNMI, the National Park Service, the National Trust for Historic Preservation, the Guam Preservation Trust, the Guam Museum, and other consulting parties to develop a Programmatic Agreement (PA) for case-by-case consultation to resolve direct effects to historic properties and address indirect and cumulative effects. The PA was signed by the Navy, the HPOs, and the ACHP in March 2011. Signature by invited signatories and concurring parties is ongoing.

A key issue during the consultation was the level of public involvement in developing and carrying out the terms of the PA. The agreement includes a wide list of consulting parties and affords consulting parties and the public a role in reviewing DoD determinations for supplemental reviews where determinations are made, revised, or projects are added, as well as on issues such as plans for access to historic properties. Consulting

parties will also be informed via annual reports and workshops of the actions taken under the PA, and their comments at these interim review sessions will be taken into account.

In addition to the archaeological data recovery that is part of the PA, the PA acknowledges responsibility and proposes mitigation for cumulative effects. It allows supplemental consultation on Navy's determinations, and in particular, supplemental consultation on the proposed firing range complex. In addition, the Navy reduced both the footprint and surface danger zones of the proposed firing range complex to ensure that they will be outside of the area known as Pãgat Village, an ancient settlement rich in historic properties. DoD also agreed not to acquire any of the land associated with Pãgat; these lands will remain in the ownership of the Government of Guam and private landowners.

Recognizing the heavy workload imposed on the HPOs by the undertaking and subsequent reviews, the PA commits DoD to supporting requests to Congress for appropriations that would provide additional resources to the HPOs to assist them with reviews. The PA also provides DoD liaisons to both the Guam and CNMI HPOs who will be duty-stationed at the HPO Offices no less than 20 hours per week and will be available to assist with the processing and logistics of DoD Section 106 submittals to the HPOs.

Other mitigation such as annual cultural resource training for DoD personnel, their families, and contractors, mandatory cultural sensitivity training for personnel, and publications prepared by the DoD, will help to offset the loss of integrity to sites of cultural significance to the indigenous Chamorro people and raise awareness of their importance and the need for cultural sensitivity among DoD service members, families and contractors, many of whom will be new residents.

For more information see: https://portal.navfac.navy.mil/portal/page/portal/navfac/navfac_ww_pp/navfac_navfacpac_pp/cr

HAWAII

Project: Case Update: Development of a High-Capacity Transit Corridor in Honolulu

Agencies: Federal Transit Administration

Contact: Blythe Semmer bsemmer@achp.gov

Last reported in the Summer 2010 *Case Digest*, this project has resulted in a Programmatic Agreement executed on January 18, 2011.

The Federal Transit Administration (FTA) recently concluded consultation to develop a Programmatic Agreement (PA) for the construction of a 20-mile elevated transit system by the City and County of Honolulu, Hawaii (city).

The Hawaii State Historic Preservation Officer (SHPO) raised several concerns with the proposed final draft last summer, and FTA and the city worked to develop measures to resolve these concerns through the fall. The final PA incorporates changes resulting from these efforts, including the addition of a Kako'o, or independent project manager meeting the Secretary of the Interior's Professional Qualifications Standards. The Kako'o will monitor, assess, and report to the consulting parties on the city's compliance with the PA and assist with the coordination of all reviews and deliverables required by the agreement. Other revisions discussed by consulting parties during a final consultation meeting in January 2011 included contingencies in the event indirect and cumulative effects are identified, particularly in the Chinatown and Merchant Street Historic Districts, and refinements to the unanticipated discoveries stipulation to ensure any human remains discovered during project construction will be reinterred promptly.

The U.S. Navy also elected to use the PA to satisfy its Section 106 responsibilities and became a signatory to the final PA. The Navy's responsibilities relate to its property located within the transit corridor, including the National Historic Landmark United States Naval Base, Pearl Harbor.

The PA is broad-ranging, reflecting the complexity of this undertaking, its construction process, and the scale of adverse effects on urban Honolulu. Now that implementation of the PA is underway, the city



The Downtown Station of the Honolulu High-Capacity Transit Corridor is planned to be located adjacent to the Dillingham Transportation Building, listed in the National Register of Historic Places.

is coordinating a series of ongoing meetings with consulting parties that will lead to historic property documentation and public education materials, among other deliverables. Consulting parties are also reviewing station designs and providing input on archaeological investigation and avoidance/mitigation planning. Finally, the PA commits the city to other mitigative efforts, such as the administration of a \$2 million preservation grant fund to encourage historic rehabilitation within the transit corridor. Although execution of the PA marked the conclusion of a complex Section 106 review process, the most significant work toward preserving historic properties in the Honolulu High-Capacity Transit Corridor is just now beginning.

HAWAII

Project: Closed Case: Memorial on Kalaupapa National Historical Park

Agencies: National Park Service

Contact: Louise Dunford Brodnitz
lbrodnitz@achp.gov

The Kalaupapa Memorial Act requires the National Park Service to establish a new memorial in honor of the estimated 8,000 people who were taken from their families and sent to an isolated location because of government policies of the time regarding people infected with leprosy. There was some concern regarding whether the memorial's location posed an adverse effect to the Kalaupapa National Historic Landmark, but a finding of no adverse effect was agreed to in December 2010, thus concluding the Section 106 process.

Ka 'Ohana O Kalaupapa is an organization of current and former residents of Kalaupapa and their families, descendants, and longtime friends. At the request of the Kalaupapa community, the group began pursuing a memorial in 2003. In 2009, President Barack Obama signed legislation that included the Kalaupapa Memorial Act requiring the National Park Service to establish a new memorial.

The property where the memorial is to be located is the Kalaupapa National Historical Park, a National Park Service property established in 1980. The site preferred by the Ka 'Ohana and now selected by the National Park Service is within the former Baldwin Boys' Home area. The Henry P. Baldwin Home for Boys was located in the historic Kalawao Settlement and operated from 1894 to 1932. The abandoned building was burned in 1936 and razed in the 1950s. Now, only the ruins of the chimney, fireplace, and stone walls of the compound can be seen, and the site is a contributing feature to the Kalaupapa National Historic Landmark nomination and listed on the National Register of Historic Places. Potential affected historic properties include St. Philomena Church and Siloama Church.

The Ka 'Ohana O Kalaupapa will sponsor a competition to design the memorial once the



Historic photo of the memorial site before buildings were demolished (photo courtesy National Park Service)

National Environmental Policy Act and Section 106 processes are concluded. The National Park Service had determined that because the outcome of the competition is uncertain, there is the potential for an adverse effect on the National Historic Landmark district and individual properties near the selected site. The Ka 'Ohana represent possibly the majority of patients, as well as current and former residents, and are concerned that the process has been unnecessarily delayed and that the determination by the National Park Service of an adverse effect on historic properties at the selected location did not represent their views nor those of Native Hawaiians.

The ACHP advised that even when significant historic properties are found within the area of potential effect, adverse effects can be avoided by modifying the undertaking, such as through design guidelines, and thus, while the effects would not be known until a design was chosen, adverse effects could be avoided. In early December 2010, the National Park Service amended its effect finding to "No Adverse Effect."

The ACHP was invited to participate in November 2009. The ACHP's involvement was at the early consultation stage, as the eventual finding of No Adverse Effect obviated further formal participation in the case.

For more information: www.kalaupapaohana.org

INTERNATIONAL

Project: Ongoing Case: Keystone XL Pipeline

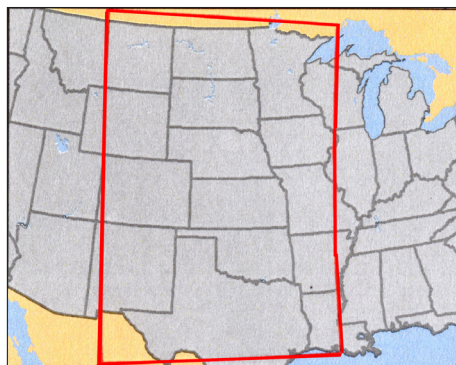
Agencies: Department of State

Contact: John Eddins jeddins@achp.gov

TransCanada Keystone Pipeline, L.P. proposes to construct and operate a crude oil pipeline crossing into the United States from Canada. A Presidential Permit issued by the U.S. Department of State is required. Hundreds of cultural resources have been identified along the more than 1,700 mile stretch of land needed to build the pipeline. A Programmatic Agreement is being developed to resolve adverse effects to those historic properties that cannot be avoided and has gone through seven revisions since July 2009.

In the drive for more energy, building new pipelines may seem like an easy solution, but it is not without controversy. Its impact can be felt widely, and the historic properties in its path must be taken into consideration. This case involves TransCanada Keystone Pipeline, L.P. which proposes to construct and operate a crude oil pipeline (the Keystone XL Project) from tar sands in Hardisty, Alberta, Canada, to Jefferson and Harris counties in Texas, passing through Montana, South Dakota, Nebraska, Kansas, Oklahoma, and into Texas. The project would include approximately 1,702 miles of new, 36-inch-diameter pipeline, covering about 327 miles in Canada and 1,375 miles within the United States. It will include 30 new pump stations, 74 mainline valves, approximately 50 permanent access roads, one tank farm, and two crude oil delivery sites. Additional access roads, stockpile sites, railroad sidings, and construction camps would be required during project construction. The pipeline would require a 110-foot wide construction right-of-way (ROW), consisting of a 60-foot temporary easement and a 50-foot permanent easement.

Hundreds of cultural resources have been identified along the pipeline ROW. The project proponent is attempting to avoid adverse effects to as many as possible by rerouting the project whenever possible. A limited number of cultural resource surveys are still ongoing or awaiting access to private land. Reports of surveys already carried out have been reviewed by



Stretching from Canada to Texas (within the area of the red rectangle), the pipeline will come in contact with hundreds of historic resources in its path.

State Historic Preservation Officers (SHPOs), tribes, and consulting parties. The final determinations of eligibility and effect, and development of treatment plans are still pending.

A bevy of federal agencies are involved in the negotiations, including the Environmental Protection Agency, Bureau of Land Management, National Park Service, Fish and Wildlife Service, Natural Resources Conservation Service, Farm Service Agency, Rural Utilities Service, U.S. Army Corps of Engineers, Western Area Power Administration, Pipeline and Hazardous Materials Safety Administration, Office of Pipeline Safety, Bureau of Indian Affairs, and Bureau of Reclamation. Six SHPOs, more than 95 Indian tribes, numerous state agencies and local governments are also involved. The views of the public are being sought.

The ACHP has been providing guidance and technical assistance to the Department of State (DOS) and other consulting parties since 2009, and formally entered the consultation in 2011 in order to help finalize the Programmatic Agreement (PA) and tribal monitoring plan. The PA has gone through seven revisions since July 2009.

The PA establishes protocols for finalizing and carrying out treatment plans to resolve adverse effects, protocols for dealing with post review discoveries, sets up a historic trails archaeological monitoring plan and a tribal monitoring plan, and establishes protocols for dealing with human remains in the different states. The tribal monitoring plan provides for the employment of monitors selected by tribes to work with environmental

inspectors and historic preservation professionals to monitor the grading and excavation process in specified areas of interest to the tribes. DOS hopes to have the PA ready for execution by late April or May 2011.

Causing consternation to a variety of participants is the fact that so many historic properties have been identified, and the list grows as additional inventory is completed. Based on the draft Environmental Impact Statement, through July 2009, 190 cultural resources were identified during the cultural resource inventory in Montana, of which 134 were archaeological sites, 15 were historic structures, and 41 were isolated finds. In South Dakota, 71 cultural resources were identified during the cultural resource inventory including 31 archaeological sites, nine historic structures, and 31 isolated finds. In Nebraska the number of cultural resources identified was 68, of which 50 were archaeological sites, 17 were historic structures, and one was an isolated find. Through July 2009, 81 cultural resources were identified in Oklahoma, including 41 archaeological sites, 22 historic structures, and 18 isolated finds. Since then, additional cultural resource surveys have been conducted in Oklahoma. In Texas, as of July 2009, 80 cultural resources were identified, of which 42 were archaeological sites, 16 were historic structures, and 22 were isolated finds. Since then, additional cultural resource surveys have been conducted in Texas. One of the properties identified is the El Camino Real de Los Tejas National Historic Trail in Texas.

The significance of the properties identified varies. The project proponent is attempting to avoid effects to identified historic properties where possible. Treatment plans will be developed in consultation with appropriate SHPOs, tribes, and other consulting parties to address effects to historic properties that cannot be avoided.

There are many concerns about environmental impacts of the project overall. Tribes have concerns about effects to aboriginal lands, both environmental effects and effects to historic properties of religious and cultural significance, but DOS is working with the project proponent, SHPOs, and tribes in an attempt to address concerns that are communicated to them. DOS and the project proponent are continuing to make a good faith effort to consult with all interested parties and address their concerns regarding historic properties.

For more information:
www.keystonepipeline-xl.state.gov/clientsite/keystonexl.nsf?Open

<http://keystonepipeline-xl.state.gov/clientsite/keystonexl.nsf/map.jpg?OpenFileResource>

KENTUCKY/ INDIANA

Project: Re-Opened Case: Louisville-Southern Indiana Ohio River Bridges Project

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

Contact: Carol Legard clegard@achp.gov

The Kentucky and Indiana state transportation agencies have been unable to raise the estimated \$4.081 billion needed to build the Louisville-Southern Indiana Ohio River Bridges Project. The consideration of cost saving changes to the project currently underway will likely require the Federal Highway Administration to amend the existing Section 106 Memorandum of Agreement.

To complete Section 106 consultation for the Louisville-Southern Indiana Ohio River Bridges Project in 2003, the Federal Highway Administration (FHWA) and two state transportation agencies carried out extensive consultation and executed an agreement that retains a role for the 40 consulting parties in the review of mitigation implementation and in project design. The two states are now looking at options to cut more than \$500 million from the project costs. Such changes in the scope of the project will likely require FHWA to amend the 2003 Memorandum of Agreement (MOA).

The MOA for the Louisville-Southern Indiana Ohio River Bridges Project was executed on April 1, 2003. The ACHP last reported on this case in the Spring 2003 *Case Digest*. Since that time, the Kentucky Transportation Cabinet and the Indiana Department of Transportation have been steadily working to implement the many mitigation measures contained in the MOA. In the last year, for example, activities included meeting with the Indiana and Kentucky Historic Preservation Advisory Teams; continuing the Historic Preservation Plan process for the Utica Limekilns and the Country Estates of River Road/River Road Corridor; continued development of the historic preservation documentation for Clark County, Indiana, and Jefferson County, Kentucky; coordinating the activities to prepare preservation easements for various properties; as well as treatment plans for other identified sites to be affected by the project. In addition,



The boat dock depicted on the Kentucky shoreline indicates this section of the river is popular with recreational boaters, which is one reason for the wide distance between the bridge piers. (photo courtesy the Ohio River Bridges Project)

the agencies have had to reconsider the treatment of the Schwartz Farm Historic District, which lost its significance when the farmhouse was razed last year.

In exploring more than \$500 million in proposed cost-saving options for the project, Kentucky and Indiana are now considering rebuilding one interchange in the existing location rather than moving it south; reducing the East End Bridge, roadway, and tunnel from six lanes to four lanes, with an option to add two lanes later if traffic demand warrants; and removing the proposed pedestrian and bike path from the design of a new downtown I-65 bridge. While these proposed changes may reduce the project's overall effects on historic properties, the states are also considering the use of tolling to help finance the project. It is not yet known how tolling might affect the surrounding communities or whether it could result in a change in traffic patterns.

FHWA recently issued a notice of intent to prepare a Supplemental Environmental Impact Statement for the project, and has initiated Section 106 consultation with the State Historic Preservation Officers and the ACHP toward amending the 2003 MOA. Next steps will include notifying all of the original consulting parties to the MOA to determine their interest in participating in development of the amendment. The project, which is opposed by local preservation groups, is currently in litigation. It was also identified by President George W. Bush as a priority project under Executive Order 13274 "Environmental and Stewardship and Transportation Infrastructure Project Reviews."

For additional information: www.kyinbridges.com

LOUISIANA

Project: Closed Case: Louisiana State-Specific Hazard Mitigation Grant Program Programmatic Agreement

Agencies: Federal Emergency Management Agency, Department of Homeland Security

Contact: Amy Barnes abarnes@achp.gov

A state-specific agreement that provides a modified Section 106 process for Hazard Mitigation Grant Program projects in response to Hurricanes Rita and Katrina in Louisiana was finally executed. While the negotiation for the agreement was complicated and protracted, remedial efforts allowed the agreement to be executed on January 31, 2011. The agreement is now operational and fulfilling its purpose of aiding homeowners to rebuild from natural disasters, while mitigating adverse effects to historic properties.

The Federal Emergency Management Agency (FEMA) has executed the state-specific Programmatic Agreement (PA) for Louisiana required under the terms of the Gulf Coast Hazard Mitigation Grant Program (HMGP) PA executed among FEMA, the Louisiana State Historic Preservation Officer (SHPO), the Mississippi SHPO, and the ACHP.

The PA dates to December 12, 2007. Its purpose is to allow Mississippi and Louisiana to allocate HMGP funds to projects that were initiated by property owners prior to their application for HMGP funds and therefore also prior to compliance with Section 106. It presents an alternative form of Section 106 compliance from the default four-step review process coordinated with SHPOs and Tribal Historic Preservation Officers. This alternative process was needed due to unprecedented circumstances associated with Hurricanes Rita and Katrina. The PA provided a grace period through March 16, 2008, during which projects could be initiated. Further, the HMGP funds enabled communities to prepare for future disasters. The Council on Environmental Quality (CEQ) and the Department of Homeland Security (DHS) helped to broker the mitigation strategy and encouraged the ACHP to coordinate Section 106 in a flexible manner



This photo, taken in New Orleans, LA, July 8, 2008, shows houses in the Jackson Barracks community of the 9th Ward, reflecting the pace of recovery, one house at a time. Barry Bahler/FEMA

allowing much needed funding to be obligated.

The process did not work as smoothly as hoped. Under the PA, each state was supposed to come up with its own separate agreement for how to handle adverse effects from the mentioned HMGP projects. Despite the bumps, Mississippi executed its Statewide HMGP PA in 2008. Louisiana, however, was unable to conclude a PA until 2011 as it experienced difficulty obtaining necessary data from the applicant (the Governor's Office of Homeland Security and Emergency Preparedness) regarding the magnitude and scope of properties that had submitted applications for HMGP grants for projects completed or underway. Despite repeated inquiries to FEMA to execute the Louisiana state-specific PA, there was very little progress through 2010, and much needed funding was not reaching property owners and communities. The effect of the lag was highlighted in 2009 when additional HMGP funding was made available to FEMA for Louisiana through the American Recovery and Reinvestment Act (ARRA). FEMA wanted to expand the Louisiana state-specific PA to include ARRA-funded undertakings, as well as to implement programmatic mitigation of adverse effects on historic properties throughout the state.

Subsequent consultation on the HMGP program led signatories (including the ACHP) in September 2010 to agree to an extension of the execution deadline for the Louisiana agreement. FEMA wanted to develop a programmatic mitigation strategy not focused on

a property-by-property basis, but instead one that targeted mitigation to a specific area where most applications for HMGP grants originated. FEMA felt this approach would have the best outcome for tangible benefits in Louisiana.

Since there were major policy issues related to whether FEMA could fund project activities completed prior to the initiation of Section 106 reviews and in a manner that may have adversely affected historic properties, ACHP Chairman Milford Wayne Donaldson established a work group to assist the ACHP staff. The work group, led by former Vice Chairman Susan Barnes, included representatives from DHS, the Department of Housing and Urban Development, the General Services Administration, Department of Agriculture's Natural Resource Conservation Service, the National Conference of State Historic Preservation Officers, and the National Trust for Historic Preservation.

The group focused on four major issues:

- 1) The type and number of properties that would not have to undergo the regular four-step Section 106 review process;
- 2) The methodology used by FEMA to assess the funding it proposed for programmatic mitigation rather than property-by-property mitigation;
- 3) The basis for FEMA's establishment of levels of funding; and
- 4) The proposed geographic target areas for proposed mitigation.

The work group issued its final findings and recommendations on December 21, 2010.

Based upon work group directives, the ACHP agreed to work with FEMA to execute the Louisiana agreement by the January 31, 2011, deadline set by the amended Gulf Coast HMGP PA. Additionally, it was agreed that a specific dollar amount reflecting HMGP funding allocations should be available for mitigation. The Louisiana agreement specified that 1 to 2 percent of the estimated \$650 million HMGP appropriation would be used for programmatic mitigation. This cap is consistent with that established by the Office of Management and Budget for administrative activities, including historic preservation reviews, funded by federal agencies that administered ARRA programs in 2009 and 2010. Likewise, it was agreed that the

programmatic mitigation would be targeted to the urban areas around New Orleans since the majority of the HMGP applications originated there.

In accordance with the findings and recommendations of the work group, a comment letter accompanied the executed PA sent to FEMA's Administrator. Given the magnitude of the damage caused by Hurricanes Rita and Katrina and the unprecedented hardship subsequently experienced by residents, the ACHP agreed that special accommodation was appropriate to avoid further financial hardships. Specifically, it was concluded that qualified residents applying for HMGP funds who found it prudent and necessary to proceed with work to stabilize and protect their homes from future disasters should not be penalized. However, the ACHP work group stressed that the Louisiana agreement was unique and not precedent-setting. Applicants should not be encouraged to take actions that compromise the intent and spirit of Section 106, because the process properly applied can be tailored in advance for agency programs that require flexibility in disaster and recovery situations.

For information on the 2007 Gulf Coast Hazard Mitigation Grant Programmatic Agreement, see the Winter 2008 Case Digest (www.achp.gov/docs/CaseDigestWinter2008.pdf).

MULTI-STATE

Project: Ongoing Case: Programmatic Agreement Development for Neighborhood Stabilization Program Funds

Agencies: Department of Housing and Urban Development

Contact: Jaime Loichinger jloichinger@achp.gov

A process established in a Programmatic Agreement including 19 states and the District of Columbia has the potential to expedite up to \$2 billion in Neighborhood Stabilization Program funds allocated under the American Recovery and Reinvestment Act.

On May 27, 2010, the Department of Housing and Urban Development (HUD) requested the assistance of the ACHP in developing a Programmatic Agreement (PA) for the \$2 billion in Neighborhood Stabilization Program funds allocated under the American Recovery and Reinvestment Act (ARRA). Execution of this PA would provide HUD and all its non-profit grantees with an agreed upon procedure for expedited Section 106 consultation for eligible activities allowed in Round 2 of the Neighborhood Stabilization Program (NSP2).

Under NSP2, non-profit organizations are eligible applicants. However, in accordance with 24 CFR Part 50, HUD maintains responsibility to complete environmental reviews, including Section 106 reviews. Currently, 19 states (Arizona, California, Colorado, Connecticut, Florida, Georgia, Illinois, Massachusetts, Maryland, North Carolina, New Jersey, New Mexico, Nevada, New York, Ohio, Pennsylvania, Texas, Virginia, and Wisconsin) and the District of Columbia have non-profit grantees that received money under NSP2. The PA focuses only on those states affected by this particular funding.

Activities eligible under NSP2 include the following:

- purchase and rehabilitation of homes and residential properties that have been abandoned or foreclosed upon for the purpose of selling, renting, or redeveloping such homes and properties;
- establishment and operation of land banks for



Urban redevelopment (photo courtesy HUD)

homes and residential properties that have been foreclosed;

- demolition of blighted structures; and,
- redevelopment of demolished or vacant properties as housing.

All of these activities have potential to adversely affect historic properties.

The ACHP convened a listening session in July 2010 to ensure that the PA addressed concerns of State Historic Preservation Officers (SHPOs). During the listening session, SHPOs raised concerns about professional qualifications, use of exemptions, the number of demolitions, and appropriate neighborhood-wide mitigation.

Last fall and winter, HUD drafted a PA in coordination with the ACHP and the National Conference of State Historic Preservation Officers that addressed the concerns identified by the listening session. As a result, the final PA provides a streamlined approach to identification and evaluation of historic properties, while providing the appropriate levels of public participation and tribal consultation.

Following the ACHP's signature in early April 2011, the PA will be distributed to the affected states, requesting the SHPO's signature. The PA will take effect in each state once the SHPO has executed the agreement and sent a copy to the ACHP.

For more information: www.hud.gov/offices/cpd/communitydevelopment/programs/neighborhoodspg/arrafactsheet.cfm

MULTI-STATE

Project: Ongoing Case: Solar Energy Draft Programmatic Agreement and Programmatic Environmental Impact Statement

Agencies: Bureau of Land Management (lead), Department of Energy

Contact: Nancy Brown nbrown@achp.gov

Solar power development, part of the new wave of emerging renewable energy generation initiatives, poses significant challenges to historic properties due to the large footprint required by large-scale solar facilities. This case involving six states is a proactive federal effort to bring the benefits of solar energy generation to the nation while minimizing adverse effects to historically and culturally sensitive areas.

The Bureau of Land Management (BLM), serving as the lead federal agency in a joint effort with the Department of Energy (DOE), is developing a Solar Energy Programmatic Agreement (PA) under Section 106 of the National Historic Preservation Act to take into account impacts on historic properties from solar energy development on BLM lands in six western states. In addition, BLM has released a draft Programmatic Environmental Impact Statement (PEIS) under the National Environmental Policy Act for this activity. The agency will also complete a more in-depth analysis of the potential impacts on lands designated in 2009 as Solar Energy Study Areas in Arizona, California, Colorado, New Mexico, Nevada, and Utah, encompassing 670,000 acres.

The Solar Energy PEIS is part of BLM's efforts to meet a goal established in the Energy Policy Act of 2005 for the agency to approve a minimum of 10,000 megawatts of non-hydropower renewable energy on BLM lands by the year 2015. This legislative requirement and the Obama Administration's strong interest in renewable energy led to this planning effort.

Generating solar energy at a utility scale is very land-intensive. Creating just one megawatt of solar energy currently requires a minimum of 5 acres of land; so a smaller-scale project of 250-megawatt power production requires at least 1,250 acres. In 2010, a number of proposed projects planned for



An example of industrial-scale solar development can be seen at Fort Carson, Colorado. (photo courtesy U.S. Army)

750 to nearly 1,000-megawatts, making the proposed project footprints as large as 8,600 acres. Associated site preparation often involves grading land prior to construction, creating the potential for significant impacts to historic properties, especially in regard to larger landscape-scale sites.

Solar energy projects were discussed in January 2011 at the Tribal Summit on Renewable Energy, a session cosponsored by the ACHP and the National Association of Tribal Historic Preservation Officers (NATHPO). Tribal representatives testified to the significance of traditional cultural properties that exist in and near desert areas that are under consideration for solar energy development. Based on their experience, representatives noted that these properties were most likely to be adversely impacted by fast-track projects, considered by federal agencies in 2010, which were expedited to take advantage of funding available through the American Recovery and Reinvestment Act of 2009 (ARRA).

Solar energy development, like other renewable energies, is guided by a number of BLM policies and procedures. Based on agency experience with those fast-track projects, the BLM developed new guidance for the internal prioritization process. For example, the three Instruction Memoranda (IM) related to energy development issued in February include screening criteria for projects on lands with low potential for resource conflict, allowing BLM to focus on and expedite these proposals. Conversely, projects with high potential for conflict, such as those near or adjacent to lands designated for protection of sensitive viewsheds,

resources, and values (e.g. units of the National Park Service; BLM National Landscape Conservation System; and Wild, Scenic and Recreational Rivers) will have higher resource conflicts and are considered more difficult to process. Such applications will be given a lower priority for action within the agency (Instruction Memorandum No. 2011-061: Solar and Wind Energy Applications – Pre-Application and Screening). Other guidance looks at how to “avoid the potential for land speculators to file applications for solar or wind energy rights-of-way on the public lands that may hinder other applicants with serious interests in the potential development of solar or wind energy resources ...” (Instruction Memorandum No. 2011-060: Solar and Wind Energy Applications – Due Diligence). Unless proponents file the required Plan of Development consistent with requirements and timelines, such as demonstrating technical and financial capability to construct the project, the BLM has authority to deny applications.

By systematically using a variety of such screening processes, the BLM is better able to prioritize its efforts. Last year the BLM California Desert District (CDD) approved six major solar energy projects; one solar project was withdrawn, and two had decisions delayed until this year. By mid-March 2011, the CDD had 21 active projects under review (proposing to use 175,000 acres), eight of which are considered priority projects for 2011. But at that time, the CDD had closed or rejected another 65 applications, and project proponents had withdrawn 40 solar project applications (totaling 947,000 acres).

The ACHP agreed to participate in the Section 106 consultation for the Solar Energy PA in 2008. The BLM is also consulting with State Historic Preservation Officers from the six affected states, the National Conference of State Historic Preservation Officers, and the National Trust for Historic Preservation. BLM has initiated government-to-government consultation with Indian tribes. Through consultation, the BLM determined to proceed with a phased approach to identifying and evaluating adverse effects to historic properties. The draft PA addresses how this tiered approach will be applied to the undertaking as a whole and to individual solar energy proposals as they are considered under

Section 106. The PEIS and PA were available for public comment through early May 2011. The BLM held 13 public meetings in February and March 2011 in the affected states and one in Washington D.C., at which the ACHP provided advice on the Section 106 process and the need for adequate consultation, and in particular tribal consultation.

NEW YORK

Project: New Case: Papscanee Island Railroad Construction

Agencies: Federal Highway Administration

Contact: Najah Duvall-Gabriel
ngabriel@achp.gov

Section 106 consultation was well underway before the Mohican Nation became a party to it in regard to an important road safety project in the ancestral home of the Nation. The ACHP was asked by the Mohican Nation Tribal Historic Preservation Officer to participate.

The Federal Highway Administration (FHWA) proposes funding a New York State Department of Transportation (NYSDOT) project to enhance passenger and freight rail safety and create a direct emergency service access route to the southern portion of the Port of Rensselaer. This is to be accomplished largely by building a new road connecting Route 9J to American Oil Road with a grade-separated crossing so that slow-moving farm equipment and other vehicles can avoid railroad tracks. The project involves construction of a new bridge to carry traffic over Papscanee Creek and a grade-separated crossing carrying the train tracks over the road.

The area of the proposed project is historically called Papscanee Island (actually a peninsula across the Hudson River from Albany) and is largely rural agricultural land, with close ties to a nearby industrial facility, the Port of Rensselaer. FHWA has identified Papscanee Island as a historic property eligible for listing in the National Register of Historic Places (NR) as a historic district for its association with events of significance to the broad patterns of upper Hudson Valley history, particularly with regard to the Mohican people, and containing sites important to history and prehistory. No architectural properties in the project area itself were identified as NR-eligible.

Papscanee Island is particularly historically and archaeologically associated with the upper Hudson Valley's Native people, who are currently recognized as the Stockbridge-Munsee Community, Band of the Mohican Nation. The pre-20th century island served as a primary place of ceremony and gathering for this



This view is of the southern end of the island which is mostly in land trust hands but still under cultivation. (photo courtesy New York State Division for Historic Preservation)

federally recognized Indian tribe in what is now New York. The island was home to the Mohican Sachem, Papsickene, who also presided over other smaller nearby islands and some of the adjacent mainland. According to the Tribal Historic Preservation Office, the chief sachem was looked upon as a great tree in whose shade the whole nation sat. He was to contemplate the welfare of his people, promote peace and happiness and promote ties of friendship with all their allies.

Papsickene's importance during the 17th century is reflected in the prosperity of the Dutch newcomers, whose wealth was dependent upon their interactions with the Mohicans and other Native populations. The island is also significant due to its likelihood to yield further information about the lives of its inhabitants as well as the knowledge that has already been gleaned through the archaeological record.

The NR-eligible historic property is bounded to the east by the Hudson River, to the west by Papscanee Creek, to the north by the Hudson River and northern inlet of Papscanee Creek, and to the south at the southern outlet of Papscanee Creek. The island's size is approximately 3.75-miles long and a half-mile wide. NYSDOT has developed studies of cultural resources on Papscanee Island. During the initial identification of historic properties, Papscanee Island was not identified as being NR-eligible, but as the location of a number of archaeological sites. However, FHWA, in consultation with the New York State Historic Preservation Officer (SHPO) and the Tribal Historic Preservation Officer (THPO) for the Stockbridge-

Munsee Community, Band of the Mohican Nation, have identified the Papscanee Island as being a historic district with various significant components. FHWA and consulting parties are reevaluating the potential effects of this undertaking on the historic district in light of this identification.

The ACHP was asked to join the Section 106 consultation by the THPO for the Stockbridge-Munsee Community, Band of the Mohican Nation. Due to an adjustment in the New York FHWA tribal consultation protocol, the Mohican Nation was recognized as having an interest in New York projects and was invited to participate in the consultation late in the Section 106 process, after it was believed that historic properties had been identified. While the Mohican Nation reservation is now located in Wisconsin, its original home prior to its westward movement was in New York. The ACHP became involved due to concerns about the late entry into consultations by the Mohican Nation and issues regarding identification, evaluation, and assessment of effects to historic properties. The ACHP's role in this review is to assist FHWA in carrying out government-to-government consultation with the Mohican Nation.

PENNSYLVANIA

Project: Closed Case: USS *Forrest Sherman*
Proposed Dismantling

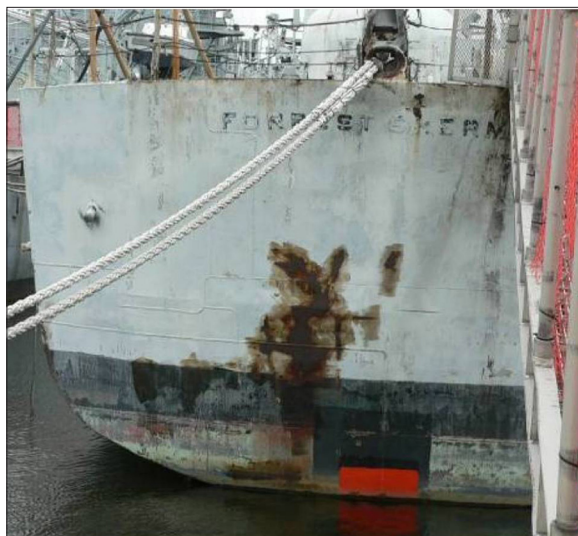
Agencies: Department of the Navy

Contact: Louise Dunford Brodnitz
lbrodnitz@achp.gov

The Navy proposed to dismantle the decommissioned USS *Forrest Sherman* and initially determined the ship not eligible for listing on the National Register. The *Forrest Sherman* DD-931 Foundation Inc. sought donation of the ship for restoration as a museum but could not meet the Navy's donation requirements. A decade later, the ship was deemed eligible for the National Register, and the foundation seeks to raise money to preserve it. A Memorandum of Agreement is now in place which sets benchmarks for the foundation and defines mitigation in the event the foundation cannot meet those benchmarks.

Commissioned in November 1955 and operating until decommissioning on July 27, 1990, the USS *Forrest Sherman* was the eponymous lead ship in the last class of all-gun (vs. gun-missile or all-missile) destroyers built in response to combat lessons of World War II. The USS *Forrest Sherman* was the first completely new destroyer to be built since World War II of a design intended to be constructed rapidly and in quantity while accommodating many technical improvements. It is one of only four remaining of the 18 *Forrest Sherman* class of destroyers built. One of the remaining four, the USS *Edson* (DD 946), has been designated a National Historic Landmark and is currently berthed alongside the USS *Forrest Sherman* at the NAVSEA Inactive Ship Facility in Philadelphia.

After the ship's decommissioning, the *Forrest Sherman* DD-931 Foundation Inc. sought donation of the ship for restoration as a museum but could not meet the Navy's donation requirements for a permanent docking facility and rehab and maintenance funds. The ship was removed from Donation Hold in 2009 after nine years in that status without any entity meeting the firm donation requirements. Upon challenge from the foundation, the Navy submitted



USS *Forrest Sherman* (photo courtesy Department of the Navy)

its determination on eligibility to the Keeper of the National Register, who determined the ship eligible for listing on August 19, 2010.

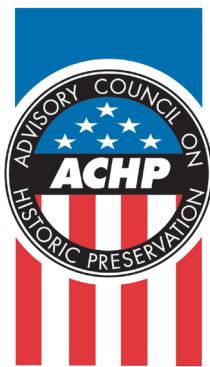
Subsequently, the Navy revised its determination saying the ship is eligible for National Register listing and notified the consulting parties of the adverse effect determination, including the foundation, Independent Seaport Museum, Project Enduring Pride, Pennsylvania State Historic Preservation Office, and the ACHP. The foundation asked that the ship be returned to Donation Hold status and requested an additional year to meet the donation requirements.

The ACHP became involved in July 2010, and a Memorandum of Agreement (MOA) was executed on March 2, 2011. A compromise was made: the MOA ensures that the Navy will take no action to dispose of the ship until the terms of the agreement are carried out. To receive the ship, the foundation must show progress within three months by identifying a permanent berth and raising 25 percent of the funds, and complete the donation terms within a year.

The Navy believes it can no longer justify the public expense of maintaining the ship in drydock when there is nothing to show for the ship's nine years in Donation Hold status. The foundation believes that the eligibility of the ship for listing on the National Register has the potential to reinvigorate fundraising, and asked for the additional year.

The deadline for proof of available firm financing in the amount of \$2.5 million as well as a commitment from a property owner for a permanent berthing location is June 1, 2011.

For more information: www.usforrestsherman.org/indexb.htm



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