



*Preserving America's Heritage*

# CASE DIGEST: SECTION 106 IN ACTION



ADVISORY COUNCIL ON HISTORIC PRESERVATION

WINTER 2010

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 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](http://www.achp.gov)

This report is available online at [www.achp.gov/casedigest](http://www.achp.gov/casedigest)

# TABLE OF CONTENTS

|   |    |
|---|----|
| <b>About this Report</b> .....  | 2  |
| <b>Guam, CNMI:</b> Ongoing Case: Guam Military Buildup.....                           | 3  |
| <b>Louisiana:</b> New Case: Demolition of the Thomy Lafon Elementary School .....     | 5  |
| <b>Massachusetts:</b> Ongoing Case: Nantucket Sound Wind Farm Application .....       | 6  |
| <b>Nationwide:</b> Closed Case: Development of a PA for Broadband Grant Programs..... | 8  |
| <b>New York, Vermont:</b> Closed Case: PA for Lake Champlain Bridge Replacement.....  | 10 |
| <b>Pennsylvania:</b> New Case: PA for Federal-Aid Highway Projects.....               | 11 |
| <b>Texas:</b> Case Update: Ft. Hood Army Alternate Procedures Implementation.....     | 12 |
| <b>Utah:</b> Closed Case: West Tavaputs Full Field Gas and Oil Development.....       | 13 |

Cover: The historic 1929-era Lake Champlain Bridge formerly spanned the narrows between Chimney Point, Vermont, (foreground) and Crown Point, New York. It was the only bridge spanning the lake, but safety concerns resulted in its abrupt removal in December 2009. (Photo courtesy Eric A. Bessette)

## 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](http://www.achp.gov) contains a useful library of information about the ACHP, Section 106 review, and the national historic preservation program.

# GUAM, CNMI

**Project:** Ongoing Case: Guam Military Build-up

**Agencies:** U.S. Navy (lead), Department of Defense; Environmental Protection Agency; National Park Service

**Contact:** Louise Dunford Brodnitz  
lbrodnitz@achp.gov

The Navy is the lead agency for a project in which the U.S. military would realign Marine Corps forces from Okinawa to Guam. This project will be partially funded by Japan under the Realignment Roadmap Agreement and would potentially affect historic properties on Guam and within the Commonwealth of the Northern Mariana Islands.

The project would relocate approximately 8,500 Marines and 9,000 dependents from Okinawa to Guam. In addition, the Navy will create a new deep-draft wharf with shore-side infrastructure in Apra Harbor, and the Army will establish an air defense facility with 600 military personnel and 900 dependents. The proposed realignment is in addition to ongoing efforts by the Air Force to increase capacity and personnel. The realignment is expected to increase Guam's population by about 24,000 Department of Defense (DoD) personnel and dependents. 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.

The island of Tinian will see increased use for training by all military services. It is further expected that DoD will increase land holdings on Guam through purchase or lease.

The proposed realignment is currently the subject of an Environmental Impact Statement (EIS) being prepared under the National Environmental Policy Act. The public comment period on the Draft EIS ended on February 17, 2010. The Navy has conducted cultural resource surveys throughout the project area and is conducting a series of public meetings and consultations. Adverse effects on historic properties will be avoided where possible. Development of a



Patrick Lujan (Guam Historic Preservation Officer) examines one of many lusong (stone mortars probably used with wooden pestles in preparing food) that remain at the Pagat site complex in Guam.

Programmatic Agreement (PA) is anticipated to provide for case-by-case consultation to resolve specific effects, once they are determined, with targeted mitigation.

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 wartime operations). Historic properties are expected to be affected through construction, operations, roadways and utility upgrades or reduced access, on military-controlled land as well as on non-federal 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 this increased workload will significantly exceed HPO current capacity.

Section 106 consultation with HPOs, the ACHP, and consulting parties identified by the Navy is ongoing and tentatively scheduled for completion in March 2010. Various mitigation measures have been proposed for inclusion in the PA for the project. These include creating or updating preservation plans, archaeological monitoring, archaeological data recovery, interpretive displays, specialized surveys, and documentation. DoD is assisting the HPOs of Guam and the CNMI in identifying curation needs for existing collections

and collections being generated by current studies and future construction projects. Also under consideration as mitigation is a program of public education to encourage protection and preservation of historic resources and deter vandalism.

Signatories in addition to DoD entities will include the Guam HPO, the CNMI HPO, and the ACHP. The National Park Service is participating as a consulting party and invited signatory.

For more information see: [www.guambuildup.com](http://www.guambuildup.com) and [www.guambuildupeis.us](http://www.guambuildupeis.us)



John Palacios (left) and Herman Tudela (right) of the Historic Preservation Office receive certificates of participation for their efforts in identifying potentially affected historic sites from Mike Carson, archaeologist at the Micronesian Area Research Center at the University of Guam.

# LOUISIANA

**Project:** New Case: Demolition of the Thomy Lafon Elementary School in New Orleans

**Agencies:** Federal Emergency Management Agency, Department of Homeland Security

**Contact:** Charlene Dwin Vaughn  
 cvaughn@achp.gov

The Federal Emergency Management Agency (FEMA) proposes to provide Public Assistance Funds to the Recovery School District to demolish the Thomy Lafon Elementary School. Neighborhood residents generally support the project, but two historic preservation organizations are opposed to demolishing the historic school. FEMA is working with consulting parties to resolve the undertaking's adverse effects on historic properties.

Through its Public Assistance Program, the Federal Emergency Management Agency (FEMA) proposes to provide funding to the Recovery School District (RSD) for the demolition of the 1952 Thomy Lafon Elementary School in New Orleans, Louisiana. RSD currently has no plans to replace the school following its demolition of the building. In consultation with the Louisiana State Historic Preservation Officer (SHPO), FEMA has determined that the Lafon School is individually eligible for National Register listing.

Thomy Lafon Elementary School is architecturally significant for its International-style design and its association with prominent New Orleans architects Nathaniel Curtis and Arthur Q. Davis, who also designed St. Frances Xavier Cabrini Church in the Gentilly neighborhood (which was demolished in a separate FEMA undertaking) and the Louisiana Superdome. The American Institute of Architects presented its First Honor Award to the school in 1954 for its innovative design. The school also is historically significant for its association with the mid-20th century growth of the Orleans Parish School District and the city of New Orleans. RSD has no plans for re-developing the Lafon School site, and any new construction there has the potential to affect two former cemeteries.



View of the terraces and add-on external hallway at the Thomy Lafon Elementary School (Photo courtesy FEMA)

The proposed project to demolish the school enjoys widespread support in the neighborhood. However, two local historic preservation organizations--the Preservation Resource Center of New Orleans and the New Orleans Chapter of DOCOMOMO (Documentation and Conservation of buildings, sites and neighborhoods of the Modern Movement) object to demolition of the historic school and have urged FEMA and RSD to find an alternative that will preserve the building. Demolition may also disturb burials remaining from when the land was formerly occupied by two mid- to late-19th century cemeteries. Because FEMA's proposed undertaking will have adverse effects on historic properties, the agency is consulting with the Louisiana SHPO, Indian tribes, neighborhood representatives, and local historic preservation organizations.

FEMA's first consultation meeting about the undertaking took place on August 21, 2009. FEMA also held a public meeting on September 23, 2009. Consultation meetings continued during the fall of 2009 and are ongoing.

For more information: [www.crt.state.la.us/culturalassets/fema106/readnotice.asp?NoticeID=132](http://www.crt.state.la.us/culturalassets/fema106/readnotice.asp?NoticeID=132)

# MASSACHUSETTS

**Project:** Ongoing Case: Nantucket Sound Wind Farm Application

**Agencies:** Minerals Management Service

**Contact:** John Eddins jeddins@achp.gov

Secretary of the Interior Ken Salazar terminated consultation on this project on March 1, 2010, and requested final comments from the ACHP. The ACHP will provide final comments in an expeditious manner within 45 days of March 1.



A view toward Nantucket Sound from Nantucket Island (photo courtesy Massachusetts Office of Travel and Tourism/Kindra Clineff)

The Minerals Management Service (MMS), a bureau of the Department of the Interior, finalized review of a permit application from Cape Wind Associates to construct a controversial wind farm project on a 24-square-mile area on Horseshoe Shoal in Nantucket Sound. Secretary of the Interior Ken Salazar had indicated that he wanted remaining issues resolved in a timely manner, and had set a March 1, 2010, deadline to determine if a resolution of adverse effects among consulting parties could be reached. The ACHP is convening a panel of members to develop formal comments for Secretary Salazar.

While much recent public and media attention had focused on the finding that Nantucket Sound is eligible for listing on the National Register of Historic Places as a Traditional Cultural Property (TCP) as well as for meeting other criteria, there are also a number of other historic resources that would be affected by the project.

The proposal consists of 130 wind turbine generators in a 24-square-mile area on Horseshoe Shoal in Nantucket Sound on the Outer Continental Shelf (OCS). While none of the Section 106 issues are unprecedented in themselves, this complex, high-profile undertaking underscores some challenging policy issues associated with the development of alternative and renewable sources of energy and their potential effects on historic properties and their settings.

The ACHP formally entered the Section 106 review in

April 2005, when the Corps of Engineers (Corps) was the lead agency, after receiving expressions of concern questioning Corps' compliance with the Section 106 regulations. MMS became lead agency after assuming responsibility for alternative energy projects on the OCS as required by the Energy Policy Act of 2005. MMS formally initiated its Section 106 consultation process in 2008, holding consultation meetings in July and September, and formally issuing a Determination of Effect in December 2008. In the finding, MMS identified 29 historic properties that will be adversely affected by the undertaking, including 28 historic structures or districts and one TCP.

Other consulting parties include the Massachusetts State Historic Preservation Officer (SHPO), the National Trust for Historic Preservation, governments and historical commissions from local communities within the viewshed of the proposed project, the Mashpee Wampanoag Tribe, the Wampanoag Tribe of Gay Head (Aquinnah), a coalition of local citizens dedicated to preservation of the natural and historic setting of Nantucket Sound, and others.

The ACHP participated in consultations and issued letters in December 2008 and April and June 2009 advising MMS regarding steps to resolve issues of concern involving the Section 106 process. The major concerns focused on the sufficiency of the effort to identify historic properties, the eligibility of Nantucket Sound as a historic property, the effect on two National Historic Landmarks (NHLs), and the status of



consultation with tribes regarding the identification of additional historic properties of religious and cultural significance to them.

Subsequently, MMS conducted site visits with the Mashpee Wampanoag Tribe and the Wampanoag Tribe of Gay Head (Aquinnah) in August 2009. In November 2009, MMS sent a letter to the Massachusetts SHPO with findings regarding the eligibility of, and effects to, additional properties identified by the tribes during those site visits. MMS found two sites eligible and adversely affected by the undertaking. In September 2009 MMS also requested formal comment from the National Park Service (NPS) regarding the nature of the effect of the undertaking on the Nantucket Historic District and the Kennedy Compound, both NHL properties. The NPS issued its response on October 27, 2009, finding that the project will have an indirect but adverse effect on the historic Nantucket Sound settings of both NHLs, resulting from a partial obstruction of long-distance, open-to-the-horizon views historically associated with the resources.

As part of the Section 106 consultation, MMS determined that Nantucket Sound was not eligible for inclusion on the National Register of Historic Places (National Register). The Massachusetts SHPO did not concur with that finding, resulting in MMS requesting a formal determination of eligibility from the Keeper of the National Register (Keeper). On January 4, 2010, the Keeper issued a determination that Nantucket Sound is eligible, under criteria A, B, C, and D, for inclusion on the National Register as an integral, contributing feature of a larger district, whose boundaries have not been precisely defined, as a traditional cultural property, and as a historic and archaeological property associated with (and that has yielded and has the potential to yield) important information about the Native American exploration and settlement of Cape Cod and its associated islands. Subsequently, on January 13, 2010, MMS issued a revised determination of effect for the project, finding that the undertaking will have an adverse effect on Nantucket Sound and also determining that four additional properties of religious and cultural significance to the tribes on Cape Cod and on Martha's Vineyard will be adversely affected by this

undertaking.

On January 13, 2010, Secretary Salazar hosted a consultation meeting for the undertaking, demonstrating the high importance placed upon projects that develop alternative and renewable sources of energy and the commitment of the Department of the Interior to engage with the consulting parties and follow through on the steps required to resolve the Section 106 process. The Secretary proposed a schedule for bringing the Section 106 review to conclusion, requesting that consulting parties and the public submit written comments regarding the effects of the project and suggestions for resolution of adverse effects to MMS by February 12, 2010. He also urged the MMS, the ACHP, and the Massachusetts SHPO to determine by March 1, 2010, if it would be possible to reach an agreement on resolution of adverse effects. Agreement was not possible.

As a follow up to the meeting hosted by the Secretary, the ACHP issued a letter to MMS outlining the next steps in the Section 106 process. The ACHP noted that the draft Memorandum of Agreement currently before the consulting parties predates the steps MMS has taken to gather additional information and needs to be reconsidered in light of revised findings. In order to move expeditiously to reach consensus, MMS and the consulting parties needed to consider the comments provided by the NPS regarding the nature of effects to the NHLs, the Keeper's determination of eligibility for Nantucket Sound, and MMS' revised assessment of effects. Secretary Salazar terminated consultation on March 1, 2010. With termination of consultation, the ACHP membership must issue comments to the head of the agency within 45 days of the request. Once the head of the agency considers the ACHP comments and responds to them, MMS may make a final decision on the project.

Because of the complexity of this case, ACHP Chairman John L. Nau, III convened a panel of ACHP members to develop formal comments in a timely manner.

# NATIONWIDE

**Project:** Closed Case: Development of a Programmatic Agreement for Broadband Grant Programs

**Agencies:** Rural Utilities Service and National Telecommunications and Information Administration

**Contact:** Blythe Semmer bsemmer@achp.gov

The U.S. Department of Agriculture's Rural Utilities Service, the Department of Commerce's National Telecommunications and Information Administration, the National Conference of State Historic Preservation Officers, and the ACHP executed a new nationwide Programmatic Agreement for two broadband programs on November 25, 2009. See [www.achp.gov/palist.html](http://www.achp.gov/palist.html).

The Broadband Technology Opportunities Program (BTOP) and Broadband Initiatives Program (BIP), receive funding from the American Recovery and Reinvestment Act of 2009 (ARRA) and are designed to bring broadband communications capability to rural, unserved, and underserved communities.

Rural Utilities Service (RUS) and National Telecommunications and Information Administration (NTIA) were appropriated more than \$7 billion for grants and loans to support the development of broadband communications infrastructure by the ARRA. The agencies approached the ACHP in Spring 2009 to determine how Section 106 compliance could be streamlined for broadband projects. BIP and BTOP may fund, among other activities, the installation of new cable and the construction of telecommunications towers.

RUS and NTIA faced significant challenges to following the regular, four-step Section 106 review process due to strict time constraints for the obligation of funds imposed by ARRA. Also, applicants who plan broadband network expansion projects submit applications to RUS and NTIA with general service area information. Recipients will not develop detailed corridor location information until their projects are funded. Attempting to complete the Section 106 re-



Infrastructure to support broadband communications may include communications towers, above-ground cable on existing utility lines, buried cable, or other facilities.

view process prior to the agency's funding decisions, RUS, NTIA, and the ACHP realized, would lead to potentially wasted effort on the part of applicants as well as State Historic Preservation Officers (SHPOs), Tribal Historic Preservation Officers (THPOs), tribes, and other consulting parties that might be asked to provide comments on areas well beyond the eventual Area of Potential Effects for a BIP or BTOP project. This approach would not expedite the release of ARRA funds to improve broadband access and create jobs in rural and underserved communities.

Following extensive discussions about the nature and coordination of RUS's and NTIA's programs, application procedures, and time limitations, the ACHP advised that a nationwide Programmatic Agreement (nPA) was the vehicle most likely to address the agencies' Section 106 compliance needs. An initial approach proposed shortened review periods to complete the Section 106 process during the application process but was abandoned following negative reaction from SHPOs and tribes. The finalized nPA defers Section 106 review (but follows the regular four-step process and its timelines) by means of a binding condition on the agencies' awards. RUS and NTIA may withdraw awards should the Section 106 process not be completed satisfactorily.

The nPA further formalizes commitments on the part

of RUS and NTIA to require their applicants to initiate Section 106 consultation no later than 90 days after the announcement of an award, and to encourage applicants to design projects in ways that avoid adverse effects to historic properties. As RUS and NTIA have authorized their applicants to initiate Section 106 consultation with SHPOs/THPOs, a provision requiring the agencies to provide guidance and federal agency contact information about Section 106 compliance was critical to the National Conference of State Historic Preservation Officers' support of the initiative.

Those activities carried out with BIP and BTOP assistance that do not have the potential to affect historic properties are identified in the nPA as not subject to Section 106 review. These include the location of broadband cable over existing power lines and sustainable broadband adoption projects limited to the purchase of computer equipment, training, and awareness efforts.

RUS and NTIA's Section 106 compliance approach for broadband ARRA projects works in concert with the Program Comment, adopted by the ACHP in October 2009, for communication facilities construction and modification. (See [www.achp.gov/news091030.html](http://www.achp.gov/news091030.html) for more information.) Should the BIP or BTOP programs provide funding assistance for the construction, modification, or collocation on a telecommunications tower subject to Section 106 review by the Federal Communications Commission, the Program Comment provides that RUS or NTIA do not have to carry out a second, duplicative review on the tower component of that undertaking.

The ACHP believes that the nPA's approach responds appropriately to the unusually compressed timeframes of the ARRA by allowing RUS and NTIA to conduct a Section 106 review according to the process set forth in the ACHP's regulations (36 CFR Part 800) after they award BIP or BTOP grants and loans. While this approach to National Historic Preservation Act compliance is unusual, the circumstances of ARRA funding have mandated the development of new, flexible means of ensuring that the views of SHPOs/THPOs, tribes, Native Hawaiian organizations, and others about historic properties have a place in expedited planning and grant-making procedures.

# NEW YORK, VERMONT

**Project:** Closed Case: Programmatic Agreement for Lake Champlain Bridge Replacement

**Agencies:** Federal Highway Administration, Department of Transportation

**Contact:** Najah Duvall-Gabriel [ngabriel@achp.gov](mailto:ngabriel@achp.gov)

In an unusual set of circumstances, the historic Lake Champlain Bridge (also known as the Crown Point Bridge) that had been scheduled for repair or replacement was discovered to be at risk of collapse and therefore posed an imminent danger to public safety in October 2009 and was demolished on December 28, 2009. A new Programmatic Agreement designed to safeguard historic resources during the construction of a replacement bridge was signed in late January 2010.

The Lake Champlain Bridge, the only bridge spanning Lake Champlain and connecting New York Highway 185 and Vermont Highway 17, became the subject of a planning process begun several years ago between the New York State Department of Transportation (NYSDOT) and the Vermont Agency of Transportation (Vtrans) that aimed to renovate or replace the historic structure in 2012. However, an inspection in late 2009 revealed that the bridge was no longer structurally sound due to unsafe support piers. The bridge was closed to traffic on October 16, 2009, and taken down by explosive demolition in late December.

The original bridge dated to 1929 and was one of the nation's first long-span continuous truss bridges, and its arch design was used on numerous subsequent bridges. Removal of the old bridge was conducted under a different Programmatic Agreement (PA) on November 25, 2009.

The location of the once and future bridge is in a richly historic region, and the new bridge construction poses potential for adverse effects to archaeological sites and historic sites at or near the bridge site itself.

In the vicinity of the bridge are Fort Crown Point, Fort



The former Lake Champlain Bridge from Chimney Point, Vermont, area. Note yellow archaeology pin flag in foreground near left bottom corner. (Photo courtesy Vermont Division for Historic Preservation)

Frederic, the Champlain Memorial Lighthouse, the Crown Point Steamboat Pier, and the Chimney Point State Historic Site.

The Federal Highway Administration (FHWA) created the most recent PA in consultation with the New York State Historic Preservation Office (SHPO), the New York State Department of Environmental Conservation, the Vermont SHPO, Vtrans, NYSDOT, and other parties. The PA sets procedures for mitigation of adverse effects and outlines the steps necessary in the review and approval of the final design of the new bridge. The potential effects of the construction impacts include, but are not limited to, access, staging and vibration, and impacts on known and/or as yet unidentified historic and cultural resources that cannot be fully determined prior to approval of the undertaking.

There is considerable public, governmental, and media interest in this effort.

# PENNSYLVANIA

**Project:** New Case: Programmatic Agreement for Federal-Aid Highway Projects in Pennsylvania

**Agencies:** Federal Highway Administration

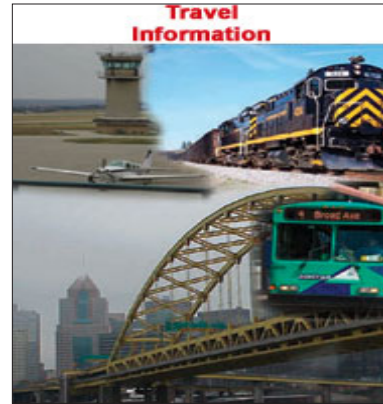
**Contact:** Carol Legard clegard@achp.gov

The Pennsylvania Division, FHWA, is finalizing a new statewide Programmatic Agreement for the Federal-Aid Highway Program. The Programmatic Agreement, which streamlines the historic preservation review of projects funded by the FHWA, will replace an existing Programmatic Agreement that is limited to minor projects.

Consultation on a new Programmatic Agreement (PA) was initiated with the Pennsylvania State Historic Preservation Officer (SHPO) and the ACHP in May 2007. The Pennsylvania Department of Transportation (PennDOT) and the Federal Highway Administration (FHWA) consulted extensively with the public, organizations concerned with historic preservation, and Indian tribes that have traditionally inhabited what is now Pennsylvania. The PA, and its accompanying Cultural Resources Handbook, requires PennDOT to continue to work with tribes and consulting parties and ensure that the public has an opportunity to comment as individual cases are reviewed.

Bridge replacement projects in Pennsylvania have been particularly controversial, with significant delay in concluding environmental review when a local preservation organization objects to the demolition of a historic bridge within its community. To help address this issue, the Cultural Resources Handbook requires PennDOT to notify potentially interested local governments and preservation organizations regarding bridge replacement projects early in planning, and provide sufficient opportunity for consultation to resolve concerns raised in the Section 106 review process.

The new PA delegates to PennDOT much of FHWA's responsibility for complying with Section 106. Under its terms, FHWA is required to become involved in consultation only when an undertaking will adversely affect a historic property, or when a dispute arises in the review of an individual undertaking. The agreement takes a two-tiered approach to exempting certain minor



Welcome screen from PennDOT site

projects from Section 106 review when they involve little to no potential to affect historic properties. Activities that may be exempted from review by district designees include those that require no expertise to evaluate (e.g., activities within the existing roadbed and disturbed median). Other exemptions require review by a PennDOT cultural resource professional to ensure that the activity will not disturb archaeological sites or other historic properties.

The PA streamlines review by eliminating case-by-case review by FHWA and the SHPO when no historic properties will be affected. SHPO review and concurrence is required only when the project may have an adverse effect, when the project requires rehabilitation in accordance with the Secretary of the Interior's Standards for Rehabilitation, or when there is public controversy on historic preservation issues. The PA authorizes PennDOT to initiate consultation with tribes, provided each tribe agrees; however, FHWA will meet its responsibility for government-to-government consultation with federally recognized tribes by intervening in consultation when a tribe so requests.

The PA also limits FHWA's need to notify the ACHP about findings of adverse effect to:

1. situations in which the undertaking may adversely affect a National Historic Landmark;
2. where the effects to historic properties are highly controversial or there is substantial public interest; or,
3. when PennDOT, SHPO, and FHWA are not able to reach agreement on resolution of adverse effects.

The ACHP anticipates the new PA will be executed by March 2010.

# TEXAS

**Project:** Case Update: Fort Hood Army Alternate Procedures Implementation

**Agencies:** U.S. Army, Department of Defense

**Contact:** Sarah Killinger [skillinger@achp.gov](mailto:skillinger@achp.gov)

Fort Hood, located about 70 miles north of Austin, Texas, has developed a plan under the Army Alternate Procedures to streamline Section 106 compliance. The plan will allow Fort Hood to identify, evaluate, determine effects, and mitigate effects, if needed, to historic properties through internal processes without project-specific review by stakeholders. Fort Hood submitted its plan for ACHP certification in January 2010. This case first appeared in the Winter 2009 *Case Digest*.

The plan under the Army Alternate Procedures (AAP) is known as a Historic Properties Component (HPC). The HPC is composed of a series of Standard Operating Procedures (SOP), each addressing a particular part of the Section 106 compliance process. By following the agreed-upon procedures in each SOP, Fort Hood will conduct all steps of the Section 106 process internally, and will report on its actions to consulting parties in annual meetings. Notification of adverse effects to stakeholders will occur primarily under the National Environmental Policy Act process, during which stakeholders have an opportunity to comment.

Fort Hood originally planned to submit the HPC for ACHP certification in February 2009. This submittal was delayed, however, when the Texas State Historic Preservation Office (SHPO) declined to sign the plan until several concerns had been addressed. It was then further delayed due to staff changes both at Fort Hood and the SHPO. The SHPO signed the HPC in December 2009, and Fort Hood submitted it to the ACHP for certification on January 11, 2010. The ACHP has conditionally certified the HPC, requiring Fort Hood to modify one SOP to be in accordance with the requirements of the AAP. Fort Hood has 60 days to make the change and resubmit; the final certification is expected in April 2010.



A chimney from a historic structure recalls the past at Fort Hood.

The Army and the ACHP worked together for several years to develop the AAP, which the ACHP approved for use by Army installations in 2001. Fort Hood notified the ACHP that it would be pursuing participation in the AAP in late 2002. Upon final certification, it will join Fort Sam Houston and Fort Benning in operating under the AAP. The goal of the AAP is to increase the efficiency of Section 106 compliance at installations by tailoring it to the installations' existing internal processes. The AAP also encourages installations and their consulting parties to work together to manage historic properties proactively, rather than on a reactive case-by-case basis.

Information on the Army Alternate Procedures in general can be found at [www.achp.gov/army.html#aap](http://www.achp.gov/army.html#aap).

# UTAH

**Project:** Closed Case: West Tavaputs Full Field Gas and Oil Development

**Agencies:** Bureau of Land Management

**Contact:** Nancy Brown nbrown@achp.gov

The Bureau of Land Management concluded Section 106 consultation for the proposed undertaking on the West Tavaputs Plateau for 800 additional natural gas wells to be developed on the central Utah plateau. The Section 106 issues focused on how dust and potentially damaging chemicals from increased truck traffic would impact prehistoric petroglyphs and archaeological sites in Nine Mile Canyon. The Programmatic Agreement signing celebration occurred January 5, 2010, in the Utah state capitol.

There are already 100 natural gas wells in production on the central Utah plateau. The recently concluded Section 106 consultation considered development of 800 additional natural gas wells. The Section 106 issues focused on how dust and potentially damaging chemicals from increased truck traffic on unimproved haul roads that serve as the entryway into the gas fields would impact prehistoric petroglyphs and archaeological sites in Nine Mile Canyon. The conclusions were documented in a Programmatic Agreement (PA), which spells out the provisions for how dust will be managed and when additional consultations will take place.

Utah Gov. Gary Herbert, ACHP Executive Director John M. Fowler, and Bureau of Land Management (BLM) State Director Selma Sierra participated in the celebratory signing of the PA. Herbert complimented the organizations and agencies involved with the consultation who stepped forward to “be part of the solution instead of part of the problem.” Fowler thanked BLM for bringing a great amount of staff time and effort to ensure all parties were heard and their ideas incorporated. He went on to thank the Utah State Historic Preservation Office (SHPO) for its dedicated involvement in making the consultation successful. Other signatories included the SHPO, State of Utah School and Institutional Trust Lands Administration, Carbon County Commission, Duchesne County



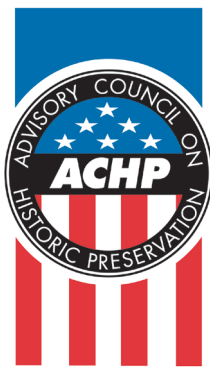
The signing ceremony for the Programmatic Agreement included from left Utah Gov. Gary Herbert; ACHP Executive Director John M. Fowler; John Harja, Director of the Governor’s Public Lands Policy Coordination Office; and Utah SHPO Wilson Martin.

Commission, and Bill Barrett Corporation (project proponent).

Concurring parties who signed included the State of Utah Public Lands Policy Coordination Office, National Trust for Historic Preservation (NTHP), Nine Mile Canyon Coalition, Barrier Canyon Style Project, Utah Rock Art Research Association, Colorado Plateau Archaeology Alliance, Utah Professional Archaeological Council, Utah Statewide Archaeological Society, and Southern Utah Wilderness Alliance.

The BLM also conducted government-to-government consultations with the Navajo Nation, Hopi Indian Tribe, Ute Indian Tribe, and Southern Paiute Indian Tribe of Utah.

The ACHP became involved in the project in September 2008 at the request of the NTHP and the Hopi Indian Tribe. At that point the BLM had been consulting with the SHPO and interested Indian tribes for more than five years. Other consulting parties were invited to join the consultation in January 2009. From the first meeting of consulting parties in February 2009 until the agreement was finalized in November 2009, the input of the tribes and consulting parties enhanced BLM’s ability to avoid, minimize, and mitigate adverse effects to the internationally renowned historic properties in Nine Mile Canyon.



*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](mailto:achp@achp.gov) · [www.achp.gov](http://www.achp.gov)