



Preserving America's Heritage

CASE DIGEST: SECTION 106 IN ACTION



ADVISORY COUNCIL ON HISTORIC PRESERVATION

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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.

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Cover: Architect Arthur Brown, Jr. designed the historic structure at 50 United Nations Plaza in San Francisco, which is destined to be the new General Services Administration's Pacific Rim Headquarters.
(photo courtesy General Services Administration)

ABOUT THIS REPORT

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

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

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

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

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

CALIFORNIA / ARIZONA

Project: Ongoing Case: Topock Remediation Project

Agencies: Bureau of Land Management

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Sites of religious and cultural significance to several Indian tribes are at the core of Superfund environmental remediation consultations in the Topock Remediation Project. The Fort Mojave Indian Tribe considers the area where remediation will take place central to its religious beliefs. In addition to the Fort Mojave, all the consulting tribes see the entire Colorado River corridor as a place of cultural significance.

The Pacific Gas and Electric (PG&E) Topock Remediation Project addresses the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA—commonly known as Superfund) cleanup of hexavalent chromium [Cr(VI)] in groundwater, and investigation and cleanup of associated contamination in soil. As part of the plant's operation, heat is generated during the gas compression process, and the heat is removed with cooling water. The water, in turn, is cooled by the passage through cooling towers. From 1951 to 1985, PG&E added Cr(VI)-based products to the cooling water to inhibit corrosion, minimize scale, and control biological growth in blowdown from the cooling towers (i.e., water that is routinely removed from the towers to prevent chemical buildup and scale formation). Blowdown was subsequently discharged into Bat Cave Wash near the Colorado River in San Bernardino County, California, and Mohave County, Arizona. A similar pollution case was the basis for the Oscar-winning film *Erin Brockovich* released in 2000. The Bureau of Land Management (BLM) is currently consulting with tribes about the investigation and cleanup options for the water and soil contamination and expects to conclude a Programmatic Agreement (PA) that may be in place for anywhere from 30 to 110 years while the CERCLA cleanup is implemented.

After a number of abortive starts, BLM met with the consulting parties monthly from December 2009 to June 2010 to create the draft PA. At the core of



While the archaeological remains at the site include this maze of stones, the larger area is significant in the passage to the afterlife for members of the Fort Mojave Indian Tribe.

the consultations are sites of religious and cultural significance to several Indian tribes. In addition to a maze extending for acres that contains lines of gravel in the desert, the area is at the heart of the Fort Mojave Indian Tribe members' beliefs on passage to the next life. Other consulting Indian tribes include the Chemhuevi Indian Tribe, Cocopah Tribe, Colorado River Indian Tribes, Fort Yuma Quechan Tribe, Havasupai Tribe, Hualapai Tribe, Twenty-Nine Palms Band of Mission Indians, and Yavapai-Prescott Indian Tribe. For these Indian tribes the area is not as central to their religious beliefs. However, they all see the entire Colorado River corridor as a place of cultural significance. While the remediation actions for water and soil are required under the CERCLA cleanup, finding a way to achieve this in the context of these sites of religious and cultural significance has been a challenge.

The consulting parties have faced other challenges in defining the area of potential effect, especially for indirect effects, and considering the larger landscape that has significance to the tribes. Other consulting parties include the Bureau of Reclamation, Fish and Wildlife Service, California and Arizona State Historic Preservation Officers, and PG&E. The ACHP became involved in the project in 2008.

The public comment period for several key remedy documents ends this summer, after which the Environmental Impact Report will be finalized. The BLM and consulting parties will continue work on the draft PA as needed. The Record of Decision is anticipated in November.

CALIFORNIA

Project: Ongoing Case: Rehabilitation of a Federal Office Building at 50 United Nations Plaza in San Francisco

Agencies: General Services Administration

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Post-Agreement Review is underway for successful rehabilitation and reuse of an iconic structure in San Francisco that played a role in the establishment of the United Nations.



50 United Nations Plaza is a contributing structure in the San Francisco Civic Center National Historic Landmark District. (photo courtesy GSA)

In spring 1945, the United Nations Conference on International Organization was held in San Francisco, California, amid a grand complex of Beaux-Arts Style civic buildings. Attended by 3,500 and observed by more than 2,500 members of the public and media, the momentous gathering of 850 delegates from 50 nations culminated in the execution of the Charter of the United Nations, which came into force that fall.

Within the complex, one of the impressive granite civic buildings was designed for the federal government by Arthur Brown, Jr., and built for \$3 million in 1934-1936. Home to the Department of the Navy in 1945, the building at 50 Fulton Street included the well-appointed office suite of Commander Chester W. Nimitz during his term as Special Assistant to the Secretary of the Navy and Goodwill Ambassador to the United Nations. Shortly after the General Services Administration (GSA) was formed in 1949, that agency began managing the property, which subsequently housed the Department of Health and Human Services, the Department of Labor, and then the Department of Education.

In the 1970s, Fulton Street was redesigned as a pedestrian-oriented plaza by Lawrence Halprin, the building received a new address—50 United Nations Plaza, and was listed in the National Register of Historic Places. The building was also designated as a contributing structure to the San Francisco Civic Center National Historic Landmark District in 1987.

After the Loma Prieta Earthquake in 1989, GSA

determined that costly capital improvements were necessary to bring 50 United Nations Plaza into compliance with building safety and seismic codes. GSA considered the possibility of disposal or a long-term ground lease for the building, and engaged in more than a year of negotiations with a private developer, Forest City Residential West. In fall 2007, GSA terminated negotiations, vacated the few remaining tenants, and reassessed its strategy for the property.

In 2008, GSA commissioned a special program development study, which demonstrated the historic property could be modernized and reused as home to GSA's Pacific Rim Regional Office headquarters. With the passage of the American Recovery and Reinvestment Act (ARRA) in 2009, and the support of GSA's Center for Historic Buildings in Washington, D.C., 50 United Nations Plaza's \$121 million "shovel ready" rehabilitation is slated for fall 2010.

The preservation community already was familiar with the historic property due to GSA's earlier proposed ground lease, and GSA expeditiously commenced Section 106 consultation on the rehabilitation in spring 2009. In the following months, the ACHP participated in GSA's consultation as a signatory, along with the California State Historic Preservation Office (SHPO), and the National Park Service as a concurring party.

By December 2009, consultation resulted in a Memorandum of Agreement among the GSA, the ACHP, and the SHPO regarding GSA's planned rehabilitation, seismic upgrade, and tenant improvements for the

property. A construction drawing submittal was distributed by GSA in February 2010, which proposed substantial demolition of character-defining corridor walls to make way for “open plan” offices and a cutting-edge passive ventilation system.

In response to consulting party comments on the submission, as well as acute budget concerns associated with the extensive scope shown in the drawing submittal, GSA’s architect hired new consultants for the project and went back to the drawing board.

GSA presented fresh concept drawings in June 2010, which were praised for retaining a majority of the historic corridors, employing a more discreet structural system, and utilizing the existing historic climate-control systems—including operable windows, transoms, and doors—while still vying for Leadership in Energy and Environmental Design (LEED) “Gold” certification.

GSA’s renewed commitment to 50 United Nations Plaza, combined with the passage of ARRA, have resulted in redevelopment plans that more effectively accommodate historic and sustainability goals.

For more information: www.gsa.gov/historicbuildings, click on “Explore by State” and scroll to find more information on 50 United Nations Plaza.



The proposal for remodeling and upgrading the 50 United Nations Plaza federal building preserves significant interior spaces. (photo courtesy GSA)

DISTRICT OF COLUMBIA

Project: Closed Case: Rehabilitation of Lincoln Memorial Reflecting Pool

Agencies: National Park Service

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The iconic but badly deteriorated Reflecting Pool and environs located immediately east of the Lincoln Memorial will be rehabilitated and upgraded through a major American Recovery and Reinvestment Act-funded project. A Programmatic Agreement governing the historic preservation aspects of the project was executed on March 18, 2010. The Section 106 review was coordinated with National Environmental Policy Act compliance.

The Lincoln Memorial Reflecting Pool is an icon of the National Mall in Washington, D.C. Deterioration of the pool and its setting had accelerated in recent years due to structural problems and heavy use. This much-needed repair of the reflecting pool and vicinity will correct water quality problems and leakage of domestic fill water, solve the problem of chronically worn turf alongside the pool, provide Americans with Disabilities Act (ADA) compliance for handicap-accessibility, reduce the proliferation of security bollards, and install permanent lighting along the elm walks. The \$30.5 million project will use American Recovery and Reinvestment Act (ARRA) funds to achieve major sustainability, accessibility, and security improvements and repair to a failing historic resource of national significance. Construction will require closure of some areas, and a formal large-scale event is likely when the work is done.

The site has national significance, having served as the backdrop for many historic events, including Marian Anderson's concert in 1939, Dr. Martin Luther King, Jr.'s "I Have a Dream" speech in 1963, the memorial service for President John F. Kennedy in 1963, and the Anti-Vietnam War rally in 1967. The monuments, memorials, landscape features, and vistas within the project area constitute some of the most iconic and



The heavily used edges of the Lincoln Memorial Reflecting Pool will be substantially renovated thanks to an ARRA-funded National Park Service project. (photo courtesy National Park Service)

recognizable images commemorating presidential legacies and military veterans in the country, resulting in millions of annual visitors. The pool and its features were part of a formal landscape envisioned in the 1902 McMillan Plan for the city, which foresaw a highly symbolic use for the project area. It is part of one of the most important axes in the nation, aligning with the U.S. Capitol, the Washington Monument, the World War II Memorial, and the Lincoln Memorial.

The property is part of the East and West Potomac Parks Historic District, listed on the National Register of Historic Places. The Lincoln Memorial Grounds is also a Cultural Landscape and is managed as a historic resource.

Initially, the National Park Service (NPS) proposed a no adverse effect determination in the Environmental Assessment. Further consultation led the NPS to determine that the design of new security barriers, replacement of turf shoulders of the pool with ADA-compliant paving, new outdoor furniture, lighting and paving of the elm walks, and above-ground infrastructure to support a new sustainable water supply system constituted an adverse effect to significant characteristics of this historic site.

The proposed undertaking largely mitigates adverse effects through a design that offers significant improvements: a new filtration system that will vastly reduce the unsustainable reliance on domestic DC water; new security features that blend into the landscape and allow removal of many non-contributing

security bollards; and, a better-integrated range of materials including paving, lighting, and increased accessibility. Mitigation of adverse effects will also include interpretative and educational materials addressing the historical development of the Reflecting Pool Area and its associated themes. Additionally, gaps in the historically significant rows of American elms around Lincoln Memorial Circle will be replanted.

During the consultation process some parties sought a system that might have a less intensive infrastructure for water supply and filtration. Additional concerns included the significant change from grass to pavement alongside the pool and suggestions for additional uses for the facility, such as fountains or ice skating, which have some historic basis.

The Programmatic Agreement (PA) was unusual in allowing for post-agreement reviews of the proposal by the National Capital Planning Commission (NCPC) and the Commission of Fine Arts (CFA), giving signatories the opportunity to assess whether any requested changes will add to the adverse effects already acknowledged in the PA. This allowed the NPS to comply with tight ARRA funding timetables, while offering a post-agreement means for consulting parties to weigh in after completion of the lengthier review processes applicable to federal projects within the National Capital Region.

The ACHP entered consultations on the project on July 27, 2009. Among other consulting parties were the NCPC, DC Historic Preservation Office, CFA, Committee of 100 on the Federal City, National Trust for Historic Preservation, and the National Coalition to Save Our Mall.

For more information:

<http://parkplanning.nps.gov/document.cfm?parkID=427&projectId=26512&documentID=31077>

http://cfa.gov/meetings/2010/mar/20100318_02.html



The iconic view of the Lincoln Memorial Reflecting Pool from the memorial steps (photo courtesy National Park Service)

HAWAII

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

Agencies: Federal Transit Administration

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A 20-mile rail transit project in Honolulu is envisioned to improve transportation in the area, but the project has potential adverse effects on a number of historic sites including two National Historic Landmarks. A Programmatic Agreement is in development to guide treatment of historic properties including burial sites that are of special concern to Native Hawaiian organizations and historic districts affected by transit-oriented development.

The City and County of Honolulu (City) proposes to construct a 20-mile elevated, electrically-powered, fixed-guideway transit system in the east-west corridor between East Kapolei and the Ala Moana Center. The transit corridor would provide service to Honolulu International Airport and 20 other stations. The City has applied for funding assistance from the Federal Transit Administration (FTA), which is conducting the Section 106 review for this undertaking.

The City examined effects to historic properties in coordination with its preparation of an Environmental Impact Statement under the National Environmental Policy Act. At the time FTA notified the ACHP in July 2009 that adverse effects were anticipated to result from the undertaking, 81 historic properties had been identified within the area of potential effects. Those expected to be adversely affected represent a diverse cross-section of resources, including historic bridges, Navy housing, community parks, Quonset huts, office buildings, and the Chinatown Historic District. Through consultation, FTA further determined that two National Historic Landmarks (NHLs)—the United States Naval Base, Pearl Harbor, and the CINCPAC Headquarters Building—would also experience adverse effects.

The ACHP formally entered consultation in early August 2009 with the following goals:

- foster responsive communication among the federal



An aerial view of downtown Honolulu, Hawaii

- agency, applicant, and a large group of consulting parties;
- elicit clarification about how the Section 106 review process followed FTA planning policies and procedures;
- ensure the consideration of issues of concern to Native Hawaiian organizations (NHOs);
- and, facilitate discussion about measures to address indirect effects.

FTA proposed development of a Programmatic Agreement (PA) to resolve adverse effects given the phased nature of project construction and the need to identify and assess effects to archaeological historic properties within the urban corridor as phased work proceeds. Consultation to develop the PA began in July 2009 but faced an early challenge when the applicant proposed finalizing the agreement within one week of the first consultation meeting. Consulting parties objected given the scope and complexity of historic preservation issues presented by the Honolulu High-Capacity Transit Corridor and the need to carefully consider the terms of any PA. Following the involvement of FTA headquarters staff in the review process, the schedule was expanded to accommodate a series of meetings throughout the late summer and fall of 2009.

A primary concern during the Section 106 review has been the potential to identify *iwi kupuna*, or burials, that hold religious and cultural significance for Native Hawaiians. Several NHOs participating in consultation expressed serious concerns about the high likelihood that such burials may be encountered during project implementation and requested the consideration of additional avoidance alternatives. While other corridors

were previously eliminated through the analysis of alternatives based on the full range of transportation planning considerations, FTA and the City have agreed to undertake archaeological studies in the areas of greatest concern to NHOs earlier in order to allow increased time for the development of design measures to avoid adverse effects to archaeological historic properties within the project corridor.

Measures to address indirect and cumulative effects, particularly those caused by station construction and the development of surrounding transit-oriented residential and commercial uses, have been another central concern in the consultation process. Consulting parties, including the National Trust for Historic Preservation and the Historic Hawaii Foundation, have advocated the inclusion of incentives and planning-related provisions in the PA to encourage preservation-sensitive rehabilitation and new development along the transit corridor. These measures would complement design review provisions that encourage adherence to the Secretary of the Interior's Standards when station construction would occur within or adjacent to a historic property.

FTA, the Hawaii State Historic Preservation Officer, and the ACHP would be signatories to a final PA. The National Park Service (representing the Department of the Interior in consultation since NHLs will be adversely affected) and the City are invited signatories. FTA is currently working with these and other consulting parties to address outstanding concerns and finalize a PA for the undertaking.

For more information: www.ocrwm.doe.gov/ym_repository/index.shtml#0

MONTANA

Project: Ongoing Case: Highwood Generating Station near Great Falls

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

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The Corps of Engineers (Corps) is considering issuing a permit that would allow construction of the Highwood Generating Station near Great Falls, in a location that may have adverse effects upon the Great Falls Portage National Historic Landmark that contains the site where the Lewis & Clark Expedition spent a month laboriously bypassing the great falls of the Missouri River on its way west. The case highlights the inherent conflict between the requirements of the Section 106 process and those set forth in the Corps' Appendix C regulations.

In April 2010, the ACHP received formal notification from the U.S. Army Corps of Engineers (Corps) that Southern Montana Electric and Transmission Cooperative, Inc. (SME) had applied for a permit from the Corps under Section 10 of the Rivers and Harbors Act (RHA) for an aerial crossing of an electrical transmission line over the Missouri River related to construction of a gas-fired electrical generating facility near Great Falls, Montana. The plans for the gas-fired facility, the Highwood Generating Station (HGS), represent a change to an undertaking that has been the subject of Section 106 consultation since 2004.

Originally, the USDA Rural Utilities Service (RUS) initiated consultation for the project under Section 106 of the National Historic Preservation Act (NHPA) in 2004 as a result of an application for \$350 million in financial assistance in the form of a loan guarantee for construction of a 250-megawatt coal-fired power plant and 6-megawatt wind energy facility at the project location. Early in the Section 106 consultation, consulting parties expressed concerns that the proposed HGS would have an adverse effect on the Great Falls Portage National Historic Landmark (NHL) which marks the location of the 18-mile, 31-day portage route taken by Meriwether Lewis and William Clark and the Corps of Discovery in 1805, around the great



A view of the Great Falls Portage National Historic Landmark today looks much the same as when the Lewis and Clark expedition bypassed the Great Falls of the Missouri River along this corridor, which is now threatened by construction of a major electrical generation plant. (photo courtesy Amy Cole, National Trust for Historic Preservation)

falls of the Missouri River. In response to an ACHP request, the National Park Service (NPS) prepared a report under Section 213 of the NHPA to assist the consulting parties in fully understanding the project's effects on the NHL. In that report, the NPS expressed concern that construction of the HGS at the preferred location would severely and irreversibly compromise the integrity of the NHL requiring a critical review of its integrity, which would likely lead to the loss of NHL status for most, if not all, of the route.

Consulting parties, including the Montana State Historic Preservation Officer (SHPO), National Trust for Historic Preservation (NTHP), NPS - Lewis and Clark National Historic Trail, Montana Preservation Alliance, Sierra Club, Citizens for Clean Energy, Montana Environmental Information Center, and others made it clear they felt that the only way to resolve the effects of the HGS on the NHL was to select another site. At the time, RUS and SME said they had concluded their analysis and would not consider alternative sites. Because consultation had reached an impasse, the ACHP anticipated that RUS would terminate consultation and request ACHP comments pursuant to 36 CFR Part 800.7. However, RUS discontinued the Section 106 consultation in February 2008 after it determined not to consider loan guarantees for the project.

Subsequently, the Corps became the lead agency for

Section 106, based on the application for a permit, and held several consultation meetings. In September 2009 the Corps notified consulting parties that SME was proposing changing the undertaking to a natural gas-powered generating station instead of a coal-powered station. In its letter of April 2010, the Corps provided more detail, indicating the natural gas-powered combined cycle generating station would occupy a reduced footprint with smokestacks limited to 100 feet in height, and no longer included a previously proposed rail-spur line and wind turbines.

Relying on the definitions and protocols set forth in Appendix C (“Procedures for the Protection of Historic Properties”) of 33 CFR 325 (“Processing of Department of the Army Permits”), the Corps determined that the “federal undertaking” is limited to the activity requiring the Section 10 RHA permit authorization, and the area of potential effects (APE) is limited to the permit area—the location of the river crossing and directly adjacent uplands. The Corps has also made a determination of “No Adverse Effect” for the revised project. The Montana SHPO has declined to comment on the determination of effect because of an unresolved disagreement about the delineation of the APE for the undertaking and the identification of historic properties that might be affected by the undertaking. In a letter dated May 25, 2010, the ACHP reminded the Corps that the ACHP has never approved Appendix C, issued by the Corps in 1990, as a counterpart regulation to 36 CFR 800, the implementing regulations for Section 106. Over the years, attempts to reconcile these two different historic preservation reviews for Corps permits have caused administrative challenges for Section 106 users and other stakeholders, and too often have led to inadequate consideration of direct and indirect effects on historic properties resulting from projects requiring federal permits.

According to the Section 106 regulations, the undertaking encompasses an entire project, including all its associated activities, not just those isolated activities that are the direct subject of the federal permit or assistance. In the case of the proposed HGS, the undertaking subject to Section 106 involves construction and operation of the combined cycle generating plant, the wells and water pipeline supplying the plant, the gas pipelines constructed to connect the

plant to the existing gas transmission system, and the electric transmission lines to connect the plant to the grid, as well as any temporary staging areas related to the project. The APE would include the areas directly affected by the construction of those facilities, including any staging areas, as well as the areas where the context and viewshed of historic properties might be affected. The ACHP advised the Corps that in order to complete the Section 106 process, the Corps must re-evaluate the scope of the undertaking using the definitions of undertaking and APE as set forth in 36 CFR 800, and consult with the SHPO to determine an appropriate APE and scope of identification effort to identify historic properties that might be affected by the undertaking.

At the time *Case Digest* goes to press, the ACHP is awaiting a response from the Corps regarding the ACHP’s May 25 letter.

Editor’s Note:

On July 16, 2010, the Montana Supreme Court ruled that Cascade County illegally rezoned the site of the power plant. The longer-term implications are unknown as Case Digest goes to press.

NATIONWIDE

Project: Ongoing Case: Development of a Prototype Programmatic Agreement for the Department of Energy's Weatherization Programs

Agencies: Department of Energy

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The Department of Energy and the ACHP developed a prototype Programmatic Agreement for weatherization grant funds to streamline the Section 106 review process, seeking to get American Recovery and Reinvestment Act funds to work as quickly as possible while safeguarding historic properties and relieving a potential increased burden on State Historic Preservation Officers.

Anticipating the dramatic increase of projects receiving funds as a result of the American Recovery and Reinvestment Act (ARRA), the Department of Energy (DOE) and the ACHP worked to address this need in August 2009. The agencies' goals were to provide predictable, consistent, and clear advice and guidance while ensuring the timeliness of Section 106 reviews.

Within DOE, the Office of Weatherization and Intergovernmental Programs (OWIP) has three programs which received a marked increase in funds through ARRA. These programs are the State Energy Program, the Weatherization Assistance Program, and the Energy Efficiency and Conservation Block Grants. Each of these programs is different, with its own criteria for participation and different types of projects to be funded. It was essential to identify a strategy to ensure DOE's compliance with Section 106 for a projected large volume of projects, while recognizing concerns of timing and clarification of review protocols.

Following a series of successful teleconferences with State Historic Preservation Officers (SHPOs) and Tribal Historic Preservation Officers in December 2009, the ACHP and DOE identified a prototype Programmatic Agreement (PA) as the most appropriate program alternative under the ACHP's regulations to address DOE's needs. The prototype PA achieves the goal of establishing a framework for reviews that have

broad applicability across the nation, while allowing for subsequent state level agreements that can be modified to suit the specific needs of a state's overall agenda for energy retrofitting and weatherization of residential, commercial, and public buildings. During the development of the prototype PA, it was critical that historic preservation also be given proper weight since numerous historic residences and buildings are likely to be affected. Accordingly, the National Conference of State Historic Preservation Officers provided input in the drafting of the prototype PA, and several SHPOs provided comments on the draft that were incorporated in the final document. The final prototype PA was distributed for use by DOE, SHPOs, and state agencies on February 8, 2010.

The prototype PA establishes efficiencies in the administration of the OWIP program by:

- providing a template PA that can be executed to evidence that DOE and the state grant recipient have complied with Section 106;
- exempting routine activities with limited potential to affect historic properties from Section 106 review;
- allowing the use of executed interagency agreements between the SHPO and the state agencies for Section 106 compliance when DOE approves the historic preservation review protocols (state agreements were to be finalized and signed by February 19, 2010);
- allowing DOE, SHPO, and state agencies to execute subsequent agreements without ACHP involvement;
- and, requiring DOE to consult with Indian tribes or Native Hawaiian organizations to develop consultation procedures for projects that may affect historic properties of religious and cultural significance to those parties.

As of the beginning of August 2010, DOE has executed 26 PAs for the OWIP programs, with approximately 18 additional PAs pending final approval and execution. The ACHP and DOE will continue to work with SHPOs and state agencies to demonstrate the positive merits of the prototype PA, and encourage the use of the prototype PA for OWIP reviews, with the goal of having PAs executed in two-thirds of the states by the end of FY 2010.

NATIONWIDE

Project: Ongoing Case: Update of Conservation and Planning Assistance Programmatic Agreement

Agencies: Natural Resources Conservation Service, Department of Agriculture

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The Natural Resources Conservation Service (NRCS) has an existing nationwide Programmatic Agreement that will expire in 2012. The NRCS is considering updating this agreement to incorporate changes and lessons learned over the past decade.

The NRCS nationwide Programmatic Agreement (PA) that addresses the agency's conservation assistance activities is scheduled to expire on May 31, 2012. While the NRCS does not anticipate major changes to the agreement, updates would be necessary to extend its duration; make it more consistent with the ACHP's current regulations, Protection of Historic Properties (36 CFR Part 800); and, add or delete provisions that incorporate lessons learned and other challenges to its effective implementation.

The existing PA provides for the agency's compliance with Section 106 in regard to its conservation assistance activities. It encourages the development of state level agreements and consultation protocols with interested Indian tribes. The NRCS works with landowners through conservation planning and assistance designed to benefit the soil, water, air, plants, and animals that result in productive lands and healthy ecosystems.

The nationwide PA encourages communication between the NRCS State Offices, State Historic Preservation Officers, Tribal Historic Preservation Officers, and Indian tribes, and includes a number of categorical exclusions that provide a streamlined approach to Section 106 compliance for certain undertakings (NRCS programs, activities, and technical assistance practices) with effects that are foreseeable and likely minimal or not adverse to historic properties.

The existing NRCS nationwide PA has been in effect for 10 years. NRCS is considering developing an



The Natural Resources Conservation Service's updated Programmatic Agreement would guide Section 106 compliance on millions of acres of land in regard to conservation assistance activities. (photo courtesy NRCS)

updated PA that would be in effect for another 10 to 15 years. NRCS wants to continue its successful operation under a nationwide program alternative to assist its state conservationists in meeting their Section 106 responsibilities.

An updated agreement would apply to NRCS conservation assistance activities and encourage the development of state level agreements and consultation protocols with interested Indian tribes and Native Hawaiian organizations. It would better reflect the ACHP's current regulations and any lessons learned from the experiences of the NRCS state conservationists, State Historic Preservation Offices, Tribal Historic Preservation Offices, Indian tribes, and Native Hawaiian organizations operating under the existing agreement.

The ACHP was a signatory to the 2002 nationwide PA, and has been involved in preliminary discussions with NRCS and the National Conference of State Historic Preservation Officers (NCSHPO) about updating the existing agreement since June 2009. In June 2010, the NRCS sent out a survey to the State Historic Preservation Officers, via NCSHPO, and followed shortly thereafter with a survey to Section 106 officers for Indian tribes and Native Hawaiian organizations to request information on the operation of the current agreement and suggestions for amendments or revisions.

For more information:

www.achp.gov/docs/PA_NRCS_Nationwide.pdf

www.nrcs.usda.gov

NATIONWIDE

Project: New Case: HUD Multi-State Programmatic Agreement for the Second Round of Funding for the Neighborhood Stabilization Program

Agencies: Department of Housing and Urban Development

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The Department of Housing and Urban Development announced on May 27, 2010, its intention to develop a multi-state Programmatic Agreement for activities allowed in Round 2 of the Neighborhood Stabilization Program. This program received approximately \$2 billion through the American Recovery and Reinvestment Act of 2009.

Round 2 of the Neighborhood Stabilization Program (NSP2) funds activities such as demolition of blighted structures, acquisition and rehabilitation of foreclosed or vacant properties, redevelopment of vacant or foreclosed properties, and establishment and operation of land banks. Under Department of Housing and Urban Development (HUD) regulations, HUD will be responsible for completing the Section 106 process for those projects where a non-profit organization is the grantee. Nineteen 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 pending projects involving non-profit organizations. The Programmatic Agreement (PA) is meant to streamline and expedite the consultation process. HUD's initial working outline of the PA includes a list of activities exempted from further review as well as standard mitigation measures for activities which may cause adverse effects.

Shortly after receiving HUD's notification, the ACHP became involved in this effort because of the significant amount of funding, the strict timelines provided by the American Recovery and Reinvestment Act, and



the potential to affect a large number of properties (approximately 11,500). HUD will be consulting extensively with the National Conference of State Historic Preservation Officers. As required by 36 CFR Part 800, HUD will also consult with tribes who ascribe significance to historic properties that may be affected by NSP2 projects. It will also consult appropriately with the public. The ACHP will be assisting HUD in these efforts.

For further information about NSP2: www.hud.gov/offices/cpd/communitydevelopment/programs/neighborhoodspg/arrafactsheet.cfm

NEW YORK

Project: Ongoing Case: Expansion of the Peace Bridge International Crossing in Buffalo

Agencies: Federal Highway Administration, U.S. Army Corps of Engineers

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The New York Division, Federal Highway Administration (FHWA), has concluded consultation on a Memorandum of Agreement for the Peace Bridge Expansion Project, now circulating for signature. As a result of Section 106 review, the Buffalo and Fort Erie Public Bridge Authority and FHWA will retain and rehabilitate the historic Peace Bridge, an international crossing built to commemorate a century of peace between Canada and the U.S. The multiple-arch and steel-plated girder bridge (1925-1927) is significant for this association and its bridge engineering. FHWA will help fund construction of a compatible companion bridge to the south to help relieve cross-border congestion and provide associated improvements in Buffalo.

The Peace Bridge connects Interstate 190 in Buffalo, New York, with the Queen Elizabeth Way in Fort Erie, Ontario, Canada. The Peace Bridge Plaza in Buffalo serves as a U.S. Land Border Port of Entry. In the 1990s, the improvements were separately proposed and analyzed by the Federal Highway Administration (FHWA) and the General Services Administration (GSA). In 2001, a federal court decision directed the agencies to analyze and plan the improvements as one National Environmental Policy Act action. The current Environmental Impact Statement was initiated in 2002 with FHWA as the lead federal agency.

Since 2002, FHWA has conducted alternatives screening and identified a preferred alternative comprised of many individual components: an improved customs plaza with additional capacity and meeting current GSA design guidelines; an interpretive center and park; a new four-lane sister bridge; a rehabilitated existing three-lane historic bridge; and, a new connecting roadway system.

Historic properties affected include the existing Peace Bridge, the Buffalo Park and Parkways System



Peace Bridge from the U.S. side in Buffalo, NY, with the Buffalo Olmsted Parks in the foreground (photo courtesy FHWA)

(including Front Park, Columbus Park, Prospect Park, and Porter Avenue) designed by F.L. Olmsted, the Hutchinson Memorial Chapel, an Episcopal church, and the Prospect Hill Historic District. Also, 13 residences eligible for the National Register but located outside of the historic district will be removed, and archaeological remains are anticipated to be discovered within the construction area.

The Buffalo Olmstead Parks Conservancy remains concerned that the adjoining truck stop/customs plaza and associated transportation infrastructure will isolate the park system and diminish the visitor experience. Other consulting parties (including the Preservation League of New York, Campaign for Greater Buffalo, and the National Trust for Historic Preservation) have commented that the size of the customs plaza and the network of ramps will overwhelm the Prospect Hill historic district, severely altering its setting. Despite these concerns, FHWA, Buffalo and Fort Erie Public Bridge Authority (PBA), New York Department of Transportation (NYDOT), New York State Historic Preservation Officer, and the ACHP have agreed the project's impacts on historic properties have been adequately minimized. These four signatories have agreed to sign a final Memorandum of Agreement that requires FHWA (with the assistance of PBA and NYDOT) to conduct further archaeological investigations in areas to be disturbed; relocate the Hutchinson Memorial Chapel and complete a plan for rehabilitation so the building can be re-used by PBA; complete documentation of the affected contributing approach spans of the Peace Bridge and of 13 individually eligible buildings proposed for demolition; fund a popular history of the Prospect Hill Historic District; and, involve consulting parties in ongoing design of project features.

VIRGINIA

Project: Closed Case: Construction of a New Interchange at McIntire Park

Agencies: Federal Highway Administration; U.S. Army Corps of Engineers

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Consultation recently concluded on this high profile transportation project. On May 28, 2010, the ACHP executed a Memorandum of Agreement with the Federal Highway Administration, the City of Charlottesville, Virginia Department of Transportation, and the Virginia State Historic Preservation Officer for construction of a new grade-separated interchange at Route 250 Bypass and McIntire Road in Charlottesville. (This case was previously reported in *Case Digest* Fall 2009.)

The Federal Highway Administration (FHWA) received a congressional earmark in 2005 for construction of the Charlottesville interchange to improve traffic flow between the Route 250 Bypass, McIntire Road, and a proposed roadway through McIntire Park in northern Charlottesville. Since that time, a coalition of local preservationists have fought to stop construction of the roadway and the new interchange, arguing that the projects together will have too great an impact by taking acreage from McIntire Park, Charlottesville's largest city park. Philanthropist Paul Goodloe McIntire gave the land to the City of Charlottesville in 1926. The park, including its 9-hole "Scottish-style" golf course, conforms to the natural topography of the site, with its hills and stream valley.

The City for 30 years has planned development of a roadway through town, and now considers the grade-separated interchange a critical aspect of the larger project. Parties opposed to the project, many of which were included as consulting parties in the Section 106 process, question FHWA's decision to limit its environmental review to the interchange excluding the proposed new roadway, known as McIntire Road Extended (MRE). The MRE project is a state-funded new roadway that will pass through the National Register-eligible historic park. The City and the Virginia Department of Transportation must obtain Section 404

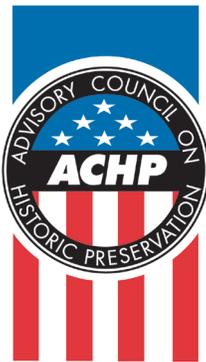


The Rock Hill Landscape, with its overgrown terraced gardens, dates to the 1930s.

permits from the U.S. Army Corps of Engineers (Corps) for construction of both the MRE and the interchange. The Corps is the lead agency for compliance with Section 106 for the MRE. Consultation on that project is in progress and has been coordinated with FHWA. Both projects will affect McIntire Park and the Scottish-style golf course. Despite these concerns, the ACHP and Virginia State Historic Preservation Officer entered into the Memorandum of Agreement (MOA) because FHWA and the City agreed to mitigation measures that address indirect and cumulative effects of the project on McIntire Park.

The interchange alone will use approximately 5.8 acres of the National Register-eligible McIntire Park, most likely affecting the golf course, a historic bath house and pool, and the Dogwood Vietnam Memorial, all contributing features to the historic site. A second historic property to be affected is the Rock Hill Landscape—a Colonial Revival-design landscape constructed in the 1930s.

Consultation on the interchange resulted in an MOA which includes a series of measures intended to minimize and mitigate effects to McIntire Park and the Rock Hill Landscape. In addition to design changes to minimize the size and footprint of the interchange, the City is committed to documentation of the Rock Hill Landscape and significant features of the park; development of interpretive signs at both sites; and, landscape plans for both historic properties. To compensate for the loss of a portion of McIntire Park, the MOA also commits Charlottesville to acquire an easement or property right for public use of the Rock Hill Landscape, if possible.



Preserving America's Heritage

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