



Preserving America's Heritage

CASE DIGEST: SECTION 106 IN ACTION



ADVISORY COUNCIL ON HISTORIC PRESERVATION

FALL 2009

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

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

TABLE OF CONTENTS

About this Report	2
Alaska: Closed Case: PA for Aviation Stationing at Fort Wainwright	3
Arizona/Utah: New Case: Lake Powell Power and Water Systems.....	5
Louisiana: Ongoing Case: Demolition and Replacement of Phillis Wheatley School	7
Oklahoma: New Case: Property Transfer, Demolition of Old Choctaw Nation Hospital .	8
Utah: Ongoing Case: Expansion of U.S. Court Facilities in Salt Lake City	9
Virginia: Ongoing Case: New Interchange and Road Extention in Charlottesville.....	11

Cover: Charlottesville, Virginia – the western stone wall of the Rock Hill Landscape will be preserved as a result of Section 106 consultation for a new interchange. Charlottesville Route 250 Bypass is visible in the background.

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.

ALASKA

Project: Closed Case: Programmatic Agreement for Aviation Stationing at Fort Wainwright

Agencies: Department of the Army (lead); National Park Service

Contact: Katharine R. Kerr kkerr@achp.gov

Construction of new hangars, helicopter and vehicle parking areas, barracks, and support facilities at Fort Wainwright will support increased aviation operations. An innovative, proactive Programmatic Agreement allows needed expansion and modernization of helicopter aviation facilities at historic Ladd Field while providing continued involvement of consulting parties in subsequent design review processes. This allows for early consideration of impacts on historic properties.

The Department of the Army is reorganizing and augmenting its aviation assets in Alaska to create a front-line, combat-ready aviation unit. Currently, this aviation function includes about 490 personnel and 32 helicopters. The increase will include stationing additional soldiers and helicopters, construction of a number of facilities within existing U.S. Army Garrison, Alaska cantonment areas, and increased aviation training on Army lands and within airspace in Alaska. Collectively, this activity is called Aviation Stationing.

The Ladd Field National Historic Landmark District (NHLD) is on the National Register of Historic Places, and the Ladd Air Force Base Cold War Historic District is eligible for listing. Based upon the results of the building survey, the boundaries of the Ladd Air Force Base Cold War Historic District would include the entire NHLD as well as additional buildings and structures immediately adjacent to the NHLD and south of the flight line.

The identified adverse effects include 1) infill construction in the NHLD dissimilar in scale or massing to nearby historic properties; 2) a proposed new hangar impeding the viewshed between Hangars 2 and 3 and North Post; 3) a potential change-in-use of Hangars 2 and 3; 4) construction of a barracks near the Ladd Air Force Base Cold War Historic District affecting the viewshed; and, 5) construction of a fence that will affect the setting of the airfield.



U.S. Army UH-60L Black Hawk helicopters load soldiers at Allen Army Air Field, Fort Greely, Alaska. The helicopters are D Company, 4th Battalion, 123rd Aviation Regiment, Fort Wainwright, Alaska. (DoD photo by Staff Sgt. Bill Morris, U.S. Air Force)

Under the Programmatic Agreement executed September 28, 2009, the Army will complete necessary future actions through a contracting process known as design/build. This means that a single contract will be awarded for the design and construction of each new aviation station element. Typically, federal agencies do not start the Section 106 review process until after the design/build contract has been awarded, meaning the historic integrity of impacted properties is not necessarily taken into account by the firm bidding for the contract. The unique difference with this undertaking, and with these future contracts, is that the Department of the Army will ensure that the firm awarded the contract acknowledges the historic properties of Fort Wainwright and adheres to the Secretary of the Interior's Standards for Rehabilitation of Historic Properties to the maximum extent possible. If the proposal does not do those things, it cannot be accepted. The Programmatic Agreement allows for the continued involvement of consulting parties who wish to participate in further design review.

The Advisory Council on Historic Preservation became involved in the consultations on March 27, 2009. Other consulting parties included the Alaska State Historic Preservation Office, Alaska Regional Office of the National Park Service, the Upper Tanana Intertribal Coalition, the Fairbanks North Star Borough, and the Tanana-Yukon Historical Society. The Programmatic Agreement is an example of how a federal agency can ensure that the integrity of historic properties is taken into account early in the project's planning, so a broad

range of alternatives may be considered during the planning process.

Ladd Field was designated an NHLD in 1985 for its significance at the national level from 1940 through 1945, and for its association with aviation and the changing role of the United States in the world community during World War II. Specifically, Ladd Field was nominated for the following three themes: cold weather aviation research, support during the World War II Aleutian Campaign, and Alaskan headquarters for the Lend-Lease program.

ARIZONA/UTAH

Project: New Case: Lake Powell Hydroelectric and Water Distribution Systems

Agencies: Federal Energy Regulatory Commission; Bureau of Land Management; Bureau of Reclamation; Bureau of Indian Affairs; National Park Service

Contact: John Eddins jeddins@achp.gov

A large geographic area and a number of consulting parties and federal agencies will be affected by a project to provide power and water. There are concerns about the proper application of Section 106 of the National Historic Preservation Act, including concerns as fundamental and significant as identifying a lead federal agency for this complex, multi-jurisdictional project.

The Advisory Council on Historic Preservation (ACHP) will become a consulting party on a project centering on the Glen Canyon National Recreation Area that is still in the Federal Energy Regulatory Commission (FERC) pre-application period. ACHP involvement will focus on facilitating communication among a number of federal agencies and consulting parties and clarifying requirements of the Section 106 of the National Historic Preservation Act process.

The proposed Lake Powell Hydroelectric System project (FERC Project No. 12966—Utah/Arizona) is both a water supply and power generation project that includes 180 miles of underground pipe, diverting water from Lake Powell Reservoir eastward to the Sand Hollow Reservoir. The project consists of four systems: 1) a water intake system; 2) a water conveyance system; 3) a hydroelectric system; and, 4) the Cedar Valley Pipeline System. FERC has jurisdiction over the hydroelectric system. The project ultimately will distribute water from Lake Powell in southeast Utah to various locations in northern Arizona and southern Utah, crossing lands administered or owned by the Bureau of Land Management, Bureau of Reclamation, Bureau of Indian Affairs, National Park Service, the states of Utah and Arizona, several Indian tribes, and a number of private citizens.



Gunsight Butte at Lake Powell. Created by the Glen Canyon Dam, Lake Powell has more than 2,000 miles of red rock shoreline. (Photographer: Tom Till; photo courtesy Utah Office of Tourism)

The Utah Board of Water Resources, the state agency proposing the project, filed a Notice of Intent with FERC to seek an original hydroelectric license for the proposed hydroelectric system. The state proposes to use FERC's Integrated Licensing Process to prepare both a license application for the hydroelectric system and the information the other federal agencies will need for reviews of the project. Since the project is currently in FERC's pre-application period, no formal application for a license has been filed. Consultants for the applicant are carrying out studies and sponsoring public meetings necessary for environmental reviews, including those related to Section 106.

The ACHP has received expressions of concern from the Utah and Arizona State Historic Preservation Offices, the project applicant, several tribes, and several federal agencies regarding Section 106 consultation. The concerns focus on the role of the applicant in initiating and carrying out Section 106 consultation, the nature of coordination among federal agencies, the benefits of having a lead federal agency, the extent of tribal consultation, a perceived lack of aggressive participation by FERC in the Section 106 consultation, and the utility of developing a Programmatic Agreement (PA) early in the process to provide a clear roadmap for the Section 106 process.

In June 2009, the ACHP sent a letter of inquiry to FERC informing the agency of the concerns and requesting information. In response, FERC provided a review of scoping and coordination meetings and a summary of tribal consultation. FERC has expressed reluctance to be the lead agency for the purposes of Section 106

and suggests that each federal agency is responsible for effects to historic properties arising from their actions related to the project. FERC does not want to develop a PA this early in the process but prefers to wait until historic properties have been identified and work begins on development of a Historic Properties Management Plan which will set forth a process for resolving adverse effects to historic properties that cannot be avoided by modifications of the proposed project design. Instead, FERC has proposed a coordination agreement intended to clarify the roles of the applicant and various federal agencies in the Section 106 process. The proposed agreement focuses on agency authorities, jurisdictional areas, and actions related to the project, and indicates that each agency will be responsible for tribal consultation and for determinations about historic properties and effects with regard to the areas affected by their specific actions.

However, the proposed coordination agreement is characterized by misconceptions about the relationship between an agency action and the undertaking. According to the Section 106 regulations, the undertaking is the overall project that may require one or more federal actions related to aspects of the project. Each federal agency that has an action related to the undertaking is responsible to take into account the effects of the entire undertaking on historic properties, not just the effects occurring in the agency's area of jurisdiction. When more than one agency is involved in an undertaking, agencies can designate a lead federal agency that will act for them in fulfilling collective responsibilities under Section 106. If they do not designate a lead federal agency, they each remain individually responsible to comply with Section 106 for the effects of the entire undertaking on historic properties. A coordination agreement that is not part of a PA does not have any standing under Section 106 in terms of dividing agency responsibility for complying with Section 106 for the entire undertaking, or for delegating additional responsibilities to an applicant beyond those specified in 36 CFR 800.2(c)(4).

No federal agency has filed a notice of adverse effect with the ACHP yet. However, the ACHP will formally enter the Section 106 consultation in order to facilitate communication among the federal agencies and consulting parties and clarify the requirements of the Section 106 process.

LOUISIANA

Project: Ongoing Case: Demolition and Replacement of the Phillis Wheatley School

Agencies: Federal Emergency Management Agency, Department of Homeland Security

Contact: Jeff Durbin jdurbin@achp.gov

The Federal Emergency Management Agency (FEMA) proposes to provide Public Assistance Funds to the Recovery School District to demolish the Phillis Wheatley Elementary School and replace it with a new facility. Two historic preservation organizations objecting to the demolition of the school have urged FEMA and its applicant to find an alternative that preserves the historic building while allowing construction of a much-needed school.

Through Federal Emergency Management Agency (FEMA) Public Assistance funding, the Recovery School District (RSD) proposes to demolish the 1954 Phillis Wheatley Elementary School and replace it with a new school structure. The existing school was heavily damaged by the 2005 Hurricane Katrina, which led to RSD's decision to demolish the building and replace it with a new facility. In consultation with the Louisiana State Historic Preservation Officer (SHPO), FEMA determined that the Wheatley school is eligible for listing in the National Register of Historic Places for its architectural and historic significance.

Phillis Wheatley Elementary School is architecturally significant for its International-style design and its association with prominent New Orleans architect Charles R. Colbert. 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. While it is located in the Esplanade Ridge Historic District, FEMA has determined that the building does not contribute to the historic district. However, because the proposed replacement school will be constructed at the existing school's location, the new building has the potential to visually affect the Esplanade Ridge Historic District, which is listed in the National Register of Historic Places.

The proposed project to construct the new school enjoys



Phillis Wheatley Elementary School

widespread support among neighborhood residents, but 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 Neighbourhoods of the Modern Movement—object to the school's destruction. Both preservation groups have urged FEMA and RSD to find an alternative that will preserve the building at the same time RSD constructs a new school facility.

FEMA is consulting with the Louisiana SHPO, the Advisory Council on Historic Preservation, Indian tribes, RSD, neighborhood residents, and the two historic preservation organizations on a Memorandum of Agreement to address the adverse effects of the proposed undertaking. FEMA's first consultation meeting took place on August 21, 2009. FEMA also held a public meeting on September 15, 2009. FEMA will continue consultation during the fall of 2009.

For more information: www.crt.state.la.us/culturalassets/fema106/readnotice.asp?NoticeID=133

OKLAHOMA

Project: New Case: Transfer of Property to the Choctaw Nation of Oklahoma and Demolition of the Old Choctaw Nation Hospital

Agencies: Indian Health Service

Contact: Martha Catlin mcatlin@achp.gov

The Indian Health Service proposes to transfer 48 acres of federal property to the Choctaw Nation of Oklahoma and demolish one of the property's structures prior to the transfer. The tribal government requested, and still concurs with, this proposal. However, some members of the tribe object to demolition of the structure, which they value as a traditional cultural property.

The Indian Health Service (IHS) proposes to transfer to the Choctaw Nation of Oklahoma 48 acres of government-owned property, including the Choctaw Indian Hospital Campus Historic District, at Talihina in southeastern Oklahoma. The Choctaw Nation of Oklahoma requested transfer of title to the buildings in the historic district along with the underlying land, which had historically been the property of the tribe. Currently, the tribe uses all of the historic buildings for tribal and health care-related functions, with the exception of the Old Choctaw Nation Hospital, a central feature of the campus. Because tribal officials consider rehabilitating and maintaining the hospital building to be economically infeasible, the tribe has requested IHS to demolish the building prior to the transfer. Some members of both the Choctaw and Chickasaw Nations, including both Tribal Historic Preservation Officers (THPOs), oppose the tribe's official position regarding demolition of the historic hospital building and have informed the IHS that they regard the property as having religious and cultural significance to the tribes.

The Choctaw Indian Hospital Campus Historic District consists of 26 buildings, some dating from as early as 1918. The district is eligible for listing in the National Register under Criterion A, as a significant property associated with the history of the federal government's Indian health care programs in Oklahoma, and under Criterion C, for its architectural and design characteristics.

The medical facility at Talihina was among the earliest



Old Choctaw Nation Hospital (photo courtesy Oklahoma Historical Society, William Van Cleave collection, March 1938)

such facilities in the United States, constructed by the federal government after a century of only minimal efforts to provide health care for Indian people. It was originally built to care for Choctaw and Chickasaw tuberculosis patients at a time when Indian populations continued to be especially susceptible to European diseases and rarely had access to adequate health care. The hospital building, vacant since construction of a new hospital on adjacent land in 1999, was designed by Chicago architects Schmidt, Garden and Erikson. Constructed of load-bearing native stone in 1937-38, the building is individually eligible for listing in the National Register. The building has been altered on the interior but retains its historic appearance on the exterior. Because of the hospital's association with the New Deal period when John Collier, as Commissioner of Indian Affairs, devoted his energies to improving health care for Indian people, the Oklahoma State Historic Preservation Officer (SHPO) has stated that significance at the national level may apply.

Consultation includes the Advisory Council on Historic Preservation (ACHP), the Choctaw Nation of Oklahoma, the Choctaw Nation THPO, and the Oklahoma SHPO. The challenges of Section 106 consultation are unusual, in part because once the transfer occurs, and the property becomes tribal land, the THPO would assume SHPO functions for that land.

On September 22, 2009, the ACHP provided IHS with an analysis of the Section 106 issues to be addressed. The analysis, which was developed by the Oklahoma SHPO and concurred by the ACHP, recommends specific steps toward minimizing and mitigating the adverse effects of the proposed undertaking.

For more information: www.choctawnation.com

UTAH

Project: Ongoing Case: Expansion of U.S. Court Facilities in Salt Lake City

Agencies: General Services Administration

Contact: Kirsten Brinker Kulis kkulis@achp.gov

Extensive Section 106 consultations led by the General Services Administration for the expansion of a federal courthouse resolved shifting tenant needs, challenging preservation requirements, and community stewardship concerns, and resulted in an unprecedented \$6.7 million relocation of an adversely affected historic property, planned expansion and renovation of the courthouse, and documentation and demolition of another structure.

In 1997, the General Services Administration (GSA) invited the Advisory Council on Historic Preservation (ACHP) to participate in consultations for the expansion of court facilities at the Frank E. Moss Courthouse. The courthouse was designed by James Knox Taylor, built in 1905, expanded in 1932, and listed in the National Register of Historic Places as a contributing building to the Exchange Place Historic District in 1978. When GSA determined its federal court tenant needed more space, GSA proposed to rehabilitate and reuse the historic courthouse in accordance with Executive Order 13006, “Locating Federal Facilities in Historic Properties.” GSA also proposed to construct an architecturally compatible annex on an adjacent site within the same city block as the historic courthouse.

The Independent Order of Odd Fellows (I.O.O.F) Hall—designed by George F. Costerisan, built in 1891, and listed in the National Register of Historic Places in 1977—was located on property the GSA proposed for the federal court annex. In 2003, responding to Section 106 consultations and the passage of Public Law (PL) 108-7 by Congress, GSA acquired a nearby site to accommodate the planned relocation of the I.O.O.F. Hall.

In early 2004, the Programmatic Agreement (PA) “Regarding Expansion of U.S. Court Facilities in Salt Lake City, Utah,” was executed by GSA, the Utah State Historic Preservation Officer, and the ACHP.



Frank E. Moss Courthouse (photo courtesy Carol M. Highsmith Photography, Inc./GSA)

The agreement addressed relocation of the I.O.O.F. Hall, completion of I.O.O.F. Hall-related mitigation, rehabilitation of the existing Moss Courthouse, and development of a compatible courthouse annex.

In late 2004, citing heightened security requirements, Congress passed PL 108-447, which mandated design changes for the annex, and authorized the GSA to acquire and demolish the nearby Shubrick Hotel—designed by John C. Craig, built in 1912, and considered eligible for listing in the National Register of Historic Places in 1982.

Section 106 consultations were reopened by GSA, and in 2008 the “First Amended Programmatic Agreement by and among the U.S. General Services Administration, the Utah State Historic Preservation Officer, and the Advisory Council on Historic Preservation Regarding Expansion of U.S. Court Facilities in Salt Lake City, Utah” was executed, with the City of Salt Lake City as a concurring party. The Utah Heritage Foundation and the National Trust for Historic Preservation were consulting parties to the agreement. The amended PA stipulated the same mitigation as the prior PA, with an additional photo documentation requirement for the Shubrick Hotel.

In summer 2009, after more than 10 years of consultation, the GSA completed the I.O.O.F. Hall building-moving mitigation stipulated by both the PA and the First Amended PA. Informed by analysis by expert engineers, the 48-foot-tall, 2,500-ton load-bearing masonry I.O.O.F. Hall was moved approximately 100 feet west, rotated 180 degrees,

and moved back beyond its original site. It was then moved north across a street, and then another 80 feet to its new location. Meanwhile, the Shubrick Hotel was documented and demolished.

Now that the I.O.O.F. Hall is secure on its new foundation, its façade will be rehabilitated by GSA, the building's listing on the National Register of Historic Places will be updated by GSA, and the property will be offered for sale with a façade easement held by the Utah Heritage Foundation. Construction on the new courthouse annex is planned to begin in 2010. Upon completion of the new annex, the historic Moss Courthouse will be vacated, rehabilitated, and readied for continued use by the courts.

The demolition of the Shubrick Hotel and the relocation of the I.O.O.F. Hall were significant adverse effects. However, GSA's successful administration of the I.O.O.F. Hall moving operation, coupled with extensive and ongoing Section 106 consultations, is indicative of the agency's commitment to satisfying tenant needs while meeting community stewardship and historic preservation responsibilities in challenging circumstances.

For more information:

www.gsa.gov/historicpreservation



I.O.O.F. Hall prior to its move (photo courtesy GSA)

VIRGINIA

Project: Ongoing Case: New Interchange for Route 250 Bypass and Extension of McIntire Road in Charlottesville

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

Contact: Carol Legard clegard@achp.gov

The ACHP is participating in two controversial transportation projects that will affect a historic park in Charlottesville. Both projects are opposed by a coalition of preservationists who believe that federal agencies involved should consider the projects together in one environmental review. The proposed McIntire Road Extended requires a Corps of Engineers permit, which triggers Section 106 review. A new grade-separated interchange that will connect to the new road is under a separate review by the Federal Highway Administration, who is providing funding for the interchange but not the new road.

In 2005, the Federal Highway Administration (FHWA) received congressional earmark funds for construction of an interchange to improve the intersection of the Route 250 Bypass at McIntyre Road and McIntire Road Extended. McIntire Road Extended (extending north from Route 250) has not yet been constructed but has been planned since the 1970 by the Virginia Department of Transportation (VDOT) and the City of Charlottesville. Last year, however, an application to the Corps of Engineers for a Section 404 permit for the McIntire Road extension triggered Section 106 review, with the Corps as the lead federal agency.

Environmental review for the new interchange, including Section 106 consultation, was initiated by FHWA and VDOT in 2006, after \$27 million in federal funding was earmarked for a new interchange at this location. Although VDOT and Charlottesville were already pursuing required approvals for McIntire Road Extended, FHWA determined that although the new interchange, funded by federal dollars, would connect directly to the new road through McIntire Park, the interchange has independent utility and could



A family plays a hole on the Scottish-style golf course in McIntire Park.

be evaluated under Section 106 and other laws and regulations as a project separate from the larger road construction project.

The proposed interchange will use approximately 5.8 acres of the National Register-eligible McIntire Park, most likely affecting a Scottish-style golf course, a historic bathhouse 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 designed landscape constructed and used in the 1930s. The proposed interchange will require breaching the outer stone wall that contributes to the historic character of this privately owned landscape.

After receiving a notification of adverse effect from the FHWA in early March 2009, the Advisory Council on Historic Preservation (ACHP) informed FHWA that it would participate in consultation to resolve the effects on historic properties of the new grade-separated interchange. FHWA invited the ACHP's comments on a draft Memorandum of Agreement (MOA) to take into account the effects of the project on two historic properties. Because of the widespread public interest and local controversy surrounding the interchange and its relationship to the extension of a major thoroughfare (McIntire Road Extended) and a new road proposed to the north, the ACHP requested that FHWA convene a meeting to discuss with consulting parties additional mitigation measures. When FHWA declined, the ACHP hosted a meeting to enable other consulting parties and the community to express views, particularly with regard to potential cumulative effects of all aspects

of road development proposals and projects on the historic neighborhood. The meeting, which was held in Charlottesville on October 9, 2009, was attended by all of the consulting parties, including FHWA, VDOT, the city, Virginia State Historic Preservation Office (SHPO), members of the Charlottesville Chamber of Commerce, local residents from the North Downtown Residents Association, and consulting parties concerned with the protection of McIntire Park, the Dogwood Vietnam Memorial, and the Rock Hill Landscape. The meeting was productive in informing ACHP staff of the views of many consulting parties and in identifying mitigation measures that may better address the interests of consulting parties. ACHP staff will follow up with recommendations to FHWA on finalizing an MOA for the interchange project.

Consultation on the McIntire Road Extended Project is on a separate track, being handled by the Corps of Engineers, Norfolk District. As much of the discussion at the ACHP meeting covered both projects, the ACHP will work with the Corps and other consulting parties on the McIntire Road Extended project to address the contribution of that project on the effects to McIntire Park and other resources. Attendees remain concerned that FHWA and the Corps will not expand their analyses to include additional alternative locations for the McIntire Road Extended. Nevertheless, participants were relieved at the opportunity to explore the commonalities of the two projects and to further elaborate on ideas for mitigation that might better address the broader, cumulative effects of the projects on historic properties.

Background:

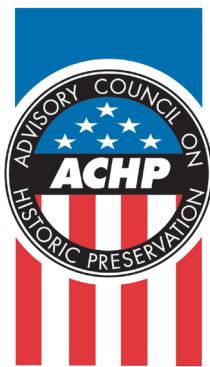
Charlottesville and VDOT have worked toward an extension of McIntire Road through McIntire Park since 1978, for the purpose of relieving traffic congestion on residential streets near downtown Charlottesville. VDOT initially requested funding from FHWA for the project, and FHWA completed an Environmental Assessment and made a Finding of No Significant Impact for the new roadway in 1995. However, VDOT withdrew its application for FHWA funding, thus defederalizing the project and eliminating federal review requirements under the National Environmental Policy Act, Section 4(f) of the Department of Transportation

Act, and Section 106.

The portion of McIntire Road north of Route 250 has not yet been constructed but continued to be pursued by the state and Charlottesville after VDOT withdrew its application for FHWA funding. In 2009, VDOT applied for a permit from the Corps of Engineers (COE) pursuant to Section 404 of the Clean Water Act, for the McIntire Road Extended. As the COE is a federal agency that also has responsibility for compliance with Section 106, the COE initiated consultation with VDOT and Charlottesville, the Virginia SHPO, and others for compliance with Section 106 on the McIntire Road Extended project. On June 12, 2009, in response to a notification from the Norfolk District COE, the ACHP informed the COE that it would participate in consultation to resolve adverse effects.

In addition to VDOT, the city, the ACHP, and the SHPO, other consulting parties for the two projects include representatives of Preservation Piedmont, STAMP 2015, North Downtown Residents Association, the Association for the Preservation of Virginia Antiquities, the Charlottesville Chamber of Commerce, Monticello Area Community Action Agency, the Dogwood Vietnam Memorial Committee, and others. Many consulting parties, including the SHPO, have requested that the two seemingly interdependent projects be reviewed as a joint project for purposes of Section 106. This perspective is understandable, especially given that the major concern of consulting parties is the effects of both projects on McIntire Park. Many opponents of the McIntire Road Extended project are participating as Section 106 consulting parties for both the road and the interchange.

The ACHP has agreed to work separately with the COE and FHWA to develop two Memoranda of Agreement. The ACHP has, however, stressed the need for FHWA and the COE to coordinate their efforts and work with consulting parties to identify meaningful mitigation measures to resolve the adverse effects of both projects on historic properties.



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