



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: Evergreen Point Bridge over Lake Washington, located on Interstate 5 in Seattle, is slated for replacement. The project poses potential adverse effects to a Traditional Cultural Property, historic neighborhoods, and an Olmsted-designed boulevard and arboretum. (Photo courtesy Washington Department of Transportation)

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: New Case: Port MacKenzie Rail Extension Project

Agencies: Surface Transportation Board

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The Alaska Railroad Corporation has applied to the Surface Transportation Board to construct and operate between 30 to 45 miles of rail line between the Port McKenzie District and an existing main line between Wasilla and Willow. A preferred route has not been determined, and a Programmatic Agreement is being developed to provide for identification of historic properties and the evaluation of effects to historic properties caused by the construction of an undertaking that cannot yet be fully assessed.

The Surface Transportation Board (STB) has determined that the proposed project is an undertaking subject to Section 106 of the National Historic Preservation Act, as it may affect properties included in or eligible for inclusion in the National Register of Historic Places (NRHP), the full extent of which will not be known until after completion of the project. The project involves unique property types and is significant for potential impacts on cultural landscapes and traditional cultural properties.

A preferred alignment for the rail line has not been decided yet, and a Programmatic Agreement (PA) is being developed to provide for the phased identification of historic properties and the evaluation of effects to historic properties caused by the construction of the undertaking that cannot be fully assessed at this time.

STB has developed the *Cultural Resources Work Plan: Proposed Port MacKenzie Rail Extensions Project, Port MacKenzie to Willow, Alaska STB Finance Docket No. 35095* for inventory of potentially-eligible properties prior to construction, and has conducted potentially-eligible properties inventories for a range of alternatives. Based on the literature, archival, and Alaska Heritage Resources Survey review, it was determined that 42 previously documented cultural resources were located within one mile of the project alternatives, including



Martin Buser, four time Iditarod champion, shows the dog mushing activity and trail conditions. (Photo courtesy Bob Martinson)

prehistoric and historic sites. Also, research on the Dena'ina cultural landscape was conducted, including place name literature pertaining to the study area. These place names and previously documented sites were later incorporated into a fieldwork probability model for guiding field crews to areas with the highest probability of containing cultural resources. As a result of utilizing the probability models, additional historic sites were documented.

Although the eligibility of these sites to the NRHP is to be decided at a later date in accordance with the procedures to be developed in the PA, STB determined the Iditarod Dog Sledding Historic District eligible for listing in the NRHP under Criterion A at the national level of significance, and the Alaska State Historic Preservation Officer (SHPO) concurred with this determination for the period of significance of 1967-1978. The boundary for contributing resources to the dog sledding landscape would include the remainder of the Iditarod National Historic Trail and other trails, kennels, and locations that contribute to the significance of the period.

STB is in consultation with the ACHP, the Federal Railroad Administration, the Alaska SHPO, and the Knit Tribal Council, a federally recognized tribe. There are a number of consulting parties participating in the Section 106 review, including the Native Village of Eklutna; Chickaloon Village Traditional Council, Native Village of Tyonek; the Happy Trails Kennels; Willow Dog Musers Association; the Cook Inlet Region, Inc.; Knikatnu, Inc; State of Alaska

Department of Natural Resources; and the Matanuska-Susitna Borough Historical Commission.

STB is consulting with Alaska Native villages, Regional Corporations, and Village Corporations that may attach a religious and/or cultural significance to historic properties potentially affected by the undertaking.

Section 106 consulting parties are in the process of developing the PA that will govern the undertaking and outline procedures for further consultation regarding the avoidance, minimization, and mitigation of effects to historic properties as the activities of this undertaking are carried out.

COLORADO

Project: New Case: Christo's Over the River Project

Agencies: Bureau of Land Management

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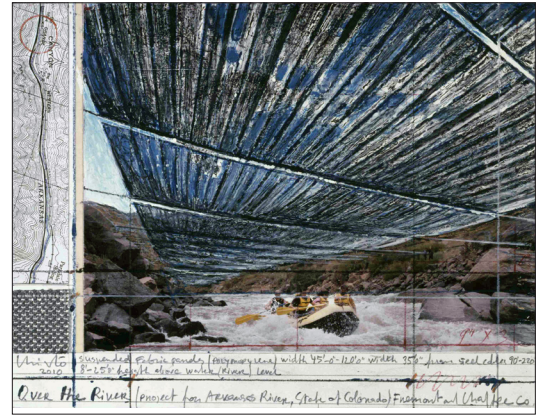
The Over the River Project, a large-scale temporary art installation at eight different locations along the Arkansas River, poses a unique Section 106 challenge.

Conceptual artist Christo and his late wife Jeanne-Claude conceived a large-scale temporary art installation that drapes fabric panels over the Arkansas River in eight separate locations along the river.

The plan is in progress, and the Bureau of Land Management (BLM) is developing an Environmental Impact Statement and has initiated Section 106 consultation to address impacts to nearly six miles of the river in the non-contiguous locations along a 42-mile stretch of the Arkansas River. Surveys of approximately 500 acres identified 113 sites and isolated finds within the area of potential effect, 73 of which are either individually eligible for the National Register of Historic Places or contributing features to the eligibility of a site.

Eligible properties include remains of a rock shelter, stone structures, a historic townsite, and abandoned trout hatchery ponds. Ground-disturbing activities were proposed at several of these sites, but as a result of the Section 106 consultation process, the Over the River Project has re-engineered portions of the project to eliminate direct effects to all historic properties. The Programmatic Agreement (PA) developed by consulting parties in the Section 106 process addresses potential indirect and cumulative adverse effects and lays out a process for any discoveries during the two-year period that is needed for pre-construction (fencing), construction of the display, the display period when hundreds of thousands of visitors are expected, and the removal period.

BLM contacted 16 tribes to consult regarding this proposed project. None identified historic properties of interest to them, expressed further interest in the project, or joined in the Section 106 consultation. A



Christo, Over The River, Project for the Arkansas River, Colorado (Photo by André Grossmann, © Christo 2010)

number of parties were invited to consult: the National Trust for Historic Preservation, Colorado Preservation Inc., Chaffee County Heritage Area Advisory Board, Fremont County Heritage Commission, and Fremont Custer Historical Society. However, only Over the River Corporation participated in consultations with BLM, the Colorado State Historic Preservation Officer, and the ACHP.

The ACHP decided to participate in the consultations to facilitate the process given the controversial nature of the project and short timeframe to complete the Section 106 process. The agency joined the process in October 2010, and the PA is on schedule for completion in winter 2011.

For more information: www.christojeanneclaude.net/eyeLevel.shtml

DISTRICT OF COLUMBIA

Project: Ongoing Case: Disposal and Reuse of Walter Reed Army Medical Center

Agencies: Department of the Army (lead), U.S. Army Corps of Engineers, Department of State, U.S. Commission of Fine Arts, National Capital Planning Commission, National Park Service

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Walter Reed Army Medical Center in Washington, D.C., is closing and moving its operations to two locales in the metropolitan area. The historic 113-acre campus is to be transferred to other entities.

In accordance with the 2005 Defense Base Closure and Realignment Commission Report, the Department of the Army medical operations for the National Capital Region will relocate from the Walter Reed Army Medical Center (WRAMC) to two locations by September 2011. The new sites are the National Naval Medical Center, Bethesda, Maryland, and Fort Belvoir Community Hospital, Virginia. The 113-acre WRAMC campus has been declared excess and surplus property which the Department of the Army intends to transfer to both federal and non-federal entities.

WRAMC opened its doors in Washington, D.C., in 1909. Since then, WRAMC expanded and evolved to become the premiere medical treatment facility for the Department of the Army. Under the 2005 Base Realignment and Closure (BRAC) process it was proposed to consolidate the various military facilities of the Departments of the Army, Navy, and Air Force in the National Capital Region into a single location at the current National Naval Medical Center in Bethesda to form the Walter Reed National Military Medical Center.

The Department of the Army began in 2005 to examine possible methods of disposing of the 113-acre campus. In spring 2009, 62.5 acres of the campus were declared surplus which led to the creation of a Local Redevelopment Authority (LRA) administered through the District of Columbia's Office of the Deputy Mayor for Planning and Economic Development. The purpose



Walter Reed Army Medical Center's Building 1 will be part of the District of Columbia's land use redevelopment plan. (Photo courtesy U.S. Army Corps of Engineers, Fort Worth District)

was to develop a plan for the local reuse of the WRAMC site. Two federal agencies—the Department of State and the General Services Administration (GSA)—were to receive 18 acres and 32.5 acres, respectively.

In February 2010, the Department of the Army, United States Army Garrison, Walter Reed (USAG-WR) initiated the Section 106 process with the District of Columbia State Historic Preservation Officer, almost five years after the decision was made to close WRAMC and dispose of the property. With assistance from the U.S. Army Corps of Engineers, Fort Worth District, USAG-WR has nearly completed the identification of historic properties on the campus. The last consultation meeting held in August 2010 focused on additional information to help bring the second step to a close. A meeting was planned for October 2010. However, this meeting was postponed and has yet to occur as *Case Digest* was being prepared for publication.

In October 2010, the LRA held a public meeting to discuss its draft final reuse plan for the 62.5 acres of WRAMC. Section 106 regulations require a federal agency to take into account the effects of its undertaking (in this case, a transfer of property out of federal ownership) on historic properties. The LRA is established, under BRAC requirements, to determine the reuse of the property. What the LRA proposes to do with the property must now be incorporated into the Section 106 process.

In October 2010, the GSA formally withdrew its request for 32.5 acres of the WRAMC campus due to budget constraints, the need to reduce the federal

real estate portfolio, and a lack of interest from other federal agencies for space in the Washington, D.C. area. However, it appears that both the District of Columbia and the Department of State may have interest in this part of the campus.

With the LRA draft final reuse plan published, GSA withdrawing its request for part of the campus, and the BRAC deadline for moving medical services to Maryland and Virginia, the Section 106 process remains fluid. The ACHP will continue to support USAG-WR through the assessment and resolution of effects.

Consulting parties for this undertaking include the following: Advisory Neighborhood Commission 4A; Advisory Neighborhood Commission 4B; Alliance to Preserve the Civil War Defenses of Washington; Brightwood Community Association; the Committee of 100 on the Federal City; the Concerned Neighbors, Inc.; District of Columbia Office of Planning; the D.C. Preservation League; National Trust for Historic Preservation; Shepherd Park Citizens Association; the Walter Reed Society; Ward 4 Councilmember; and the Washington City Administrator.

For more information: <http://dcbiz.dc.gov/DC/DMPED/Programs+and+Initiatives/Neighborhood+Revitalization/Ward+Four/Walter+Reed+Army+Medical+Center>

MASSACHUSETTS

Project: New Case: Replacement of the Mitchell River Bridge in Chatham

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

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The old historic preservation question of “*when is a continuously updated wooden ship no longer the original vessel because all the wood has been replaced, and when that point is reached, is it still historic?*” rises again. But in this case the question is in regard to a wooden drawbridge that was substantially replaced in the 1980s but nonetheless is a unique historic remnant in Massachusetts.

At the ACHP’s request, the Federal Highway Administration (FHWA) sought a formal determination of eligibility for the Mitchell River wooden drawbridge in the Cape Cod town of Chatham. Although the bridge was largely rebuilt in the 1980s, the Keeper of the National Register of Historic Places deemed it eligible for listing as the last single leaf timber drawbridge in Massachusetts, and perhaps in the U.S. The determination illustrates that a historic property may be eligible for the National Register despite a loss of integrity, if it is a sufficiently rare example of a property of its type.

The Massachusetts Department of Transportation (MassDOT), with funding from FHWA’s Accelerated Bridge Program (ABP), proposes to replace the Mitchell River Bridge. The existing drawbridge needs frequent repair, and its pilings are deteriorating, which is why the state wants to replace it with a more durable structure. MassDOT’s proposal to spend \$12 million to build a new concrete and steel bridge to replace the wooden structure was agreed to by the Chatham governing board, FHWA, and the Massachusetts State Historic Preservation Office (SHPO), when objections were raised by a group of Chatham residents known as the Friends of the Mitchell River Wooden Drawbridge.

The existing bridge is described as a picturesque element in a coastal setting on Cape Cod. The timber drawbridge carries pedestrians, cyclists, and motor vehicles along Bridge Street over the Mitchell River. Initially, the SHPO and MassDOT agreed that because it is



This wooden drawbridge in Chatham is one of a very few such structures still in existence in the nation and is unique in Massachusetts. (Photo courtesy Friends of the Mitchell River Wooden Drawbridge)

substantially a modern structure erected in the 1980s during a replacement project, the wooden drawbridge was not eligible for the National Register, and thus not subject to protection under Section 106 of the National Historic Preservation Act. No portion of the original 1858 bridge remains in place today, and only wooden piers pre-date the 1980 construction.

The Friends group, however, asserted that although it was largely rebuilt, a wooden drawbridge had been in this location for many years, thus the current bridge is historically significant and should be preserved or replaced with another wooden bridge.

When the Friends group was unsuccessful in engaging the SHPO’s or FHWA’s support, it contacted the ACHP for assistance. A number of preservation organizations supported the Friends’ request that eligibility be reconsidered, including the National Trust for Historic Preservation, Preservation Massachusetts, and the Chatham Historical Commission. On May 9, 2010, the ACHP wrote to FHWA requesting that it seek a determination of eligibility from the Keeper of the National Register of Historic Places as provided for in the Section 106 regulations.

FHWA submitted documentation prepared by MassDOT and the Friends, and on October 2, 2010, the Keeper determined that the Mitchell River Bridge is eligible for the NRHP “under Criterion A for its association with local transportation history and under Criterion C as a rare surviving example of a structure embodying the distinctive characteristic of a once-common method of construction.” The Keeper

noted that “The Mitchell River Bridge, constructed in 1980 atop the pilings of an earlier bridge, is one of a continuous line of wooden drawbridges that have spanned this river crossing for over 150 years. It is the last remaining single-leaf wooden drawbridge in Massachusetts (and perhaps in the entire United States), and as such, is of exceptional significance.”

Since the Keeper found the Mitchell River Bridge to be eligible for the NRHP, MassDOT has been considering its options and is preparing to complete an analysis of alternatives for Section 4(f) of the Department of Transportation Act. To initiate consultation to resolve adverse effects, FHWA has invited interested persons/ organizations to become consulting parties in the Section 106 process.

FHWA and MassDOT hosted a meeting on January 25, 2011, in Chatham to brief the consulting parties on the status of their reconsideration of the project as a result of the eligibility-determination for the bridge. MassDOT acknowledged that the project will adversely affect the historic bridge, and that it is analyzing a wide range of alternates to rehabilitate or replace the bridge. Consulting parties raised a number of concerns about the process to date and MassDOT’s proposal to replace the bridge piers with concrete rather than wood. A discussion ensued regarding the appropriateness of rebuilding the bridge in kind, on wooden piers. MassDOT and FHWA closed the meeting with a commitment to provide the consulting parties with information supporting the findings and to meet again to discuss the alternatives. ACHP staff participated in the meeting on a conference line.

Consulting parties include Friends of the Mitchell River Wooden Drawbridge, Chatham Historical Commission, Indiana Historic SPANS Task Force, and the National Trust for Historic Preservation.

OHIO

Project: Ongoing Case: Mitigation of Adverse Effects to Pennsylvania Railway Ore Dock, Cleveland

Agencies: U.S. Army Corps of Engineers

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A contentious and longstanding Section 106 review of a project that involved removal of historic ore-loading structures along the Cleveland waterfront has been revived by renewed attempts to reach a consensus on ways to resolve adverse effects.

In July 2010, after more than two years of inactivity in the Section 106 consultation process, the Corps of Engineers, Buffalo District (Corps) sent letters to the ACHP and other consulting parties requesting their input on proposed measures for the mitigation of adverse effects to the Pennsylvania Railway Ore Dock in Cleveland, Ohio. The Corps is reviewing a re-application by the Cleveland-Cuyahoga County Port Authority (Port) for a permit under Section 10 of the Rivers and Harbors Act for dredging in Cleveland Harbor associated with the proposed expansion of the Ore Dock, which is now referred to as the Cleveland Bulk Terminal (CBT).

Consulting parties in the consultation have included the Port, the Ohio State Historic Preservation Officer (SHPO), U.S. Rep. Dennis Kucinich, the National Trust for Historic Preservation (NTHP), the Ohio Canal Corridor, the Cleveland Restoration Society, the Committee to Save Cleveland's Hulett's, Cleveland City Councilman Matt Zone, Oglebay Norton Company (now Carmeuse Lime and Stone, a subsidiary of the Belgian-owned Carmeuse Group, the property owner), and several individuals. At the last consultation meeting in October 2007, various mitigation measures had been suggested and discussed by consulting parties. However, there had been no follow-up communication with consulting parties regarding the analysis of, or further consideration of, alternatives for the mitigation of adverse effects.

Controversy regarding the expansion of the CBT and its effects on the Ore Dock has been ongoing since 1997.



Massive Hulett Ore Unloaders are contributing elements to the historic Pennsylvania Railway Ore Dock. (Photo courtesy Library of Congress)

In 1999, the Corps advised the Port that it would have no jurisdiction, under Appendix C of 33 CFR part 325, over the broader expansion of the CBT and its effects on components of the Ore Dock if an application for dredging along the dock face was reduced from a proposed 2,000 feet to 600 feet. The 2,000-foot length was necessary to enable access by larger ships that could utilize the proposed expanded capacity of the CBT. The 600-foot length could be considered maintenance of the existing facility. It should be noted that Appendix C has never been approved by the ACHP as an alternative to the Section 106 regulations (36 CFR part 800) from which it differs in a number of important ways. The Port reduced the dredge area in the permit application. Then, despite protests from the SHPO and others, the Port proceeded to demolish components of the Ore Dock, including two Hulett Ore Unloaders, following approval of the demolition in a local preservation review process. The Hulett's were contributing elements of the Ore Dock, which was listed on the National Register of Historic Places in 1997. In 2001, the U.S. District Court in Ohio, Eastern Division, found, in a law suit brought by the Committee to Save the Hulett's, that the Corps had violated the National Historic Preservation Act (NHPA) by issuing a permit without awaiting comment from the SHPO and the ACHP. The Court ordered the Corps to revoke the permit and, when considering any new permit application, comply with all requirements of the NHPA.

In 2005, the Port submitted a new permit application to the Corps with a request to dredge along 2,000 feet of the CBT dock face. In response to an Adverse Effect

notice from the Corps, the Ohio SHPO suggested that the adverse effect from the initial demolition of the Hulets and associated buildings was not adequately resolved after the Corps revoked the previously issued permit in 2001. The ACHP requested that the Corps make a determination of the applicability of Section 110k of the NHPA, which applies when an applicant for a federal permit or assistance intentionally adversely affects a historic property with the intent to avoid the requirements of Section 106. In June 2007 the Corps determined that Section 110k applied because the permit applicant segmented its application to conduct dredging at the CBT with the intent to avoid the Section 106 review and proceed to demolish components of the ore dock. The Corps also concluded that there were “mitigating” circumstances that justified continuing the Section 106 consultation process and that might justify granting a permit once appropriate steps to resolve adverse effects were agreed on and formalized in a Memorandum of Agreement (MOA). In its response, the ACHP suggested that it did not completely agree with the Corps’ determination that there were mitigating circumstances but that it respected its intention to proceed with the Section 106 review.

In its communication of July 2010, the Corps provided a draft MOA developed by the applicant, which focuses on mitigation for adverse effects involving: the historic documentation that has already been completed under the local preservation review process; the previous donation of two of the Ore Dock shunt engines to museums; and the potential donation of “significant elements” of two Hulets (a bucket and leg) to one or two recipients (the Great Lakes Science Center and the Willis B. Boyer Maritime Museum) to display at their locations. However, these mitigation proposals are essentially the same as those proposed by the Port back in 2007.

A number of consulting parties, including the SHPO and the ACHP, believe that given the protracted delay, the Corps needs to reengage the consulting parties and update all on the range of options to mitigate adverse effects. Consulting parties feel that the truncated consultation process did not exhaust the possibilities for resolution of adverse effects and that there has not been sufficient public involvement in the development of the draft MOA and ideas for resolution of adverse effects. Many believe that creative and alternative mitigation

measures can still be put forth to address the broader preservation goals of the community. The ACHP has suggested that the Corps reinitiate the Section 106 process, invite the consulting parties back to the table for dialogue, and use the draft MOA as a starting point for renewed consultation. A consulting party meeting was held on November 4, 2010, to discuss the path forward. The Corps is continuing to explore options for resolving adverse effects.

PENNSYLVANIA

Project: Ongoing Case: Pennsylvania Army National Guard Disposal of State-Owned Armories and the Transformation of the 56th Brigade into a Stryker Brigade Combat Team

Agencies: National Guard Bureau, Department of the Army

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The Pennsylvania State Historic Preservation Office requested the ACHP to clarify its views on disposal of state-owned armories. The ACHP provided guidance to the National Guard Bureau and the Pennsylvania State Historic Preservation Office regarding undertakings and reasonably foreseeable effects. As a result, the National Guard Bureau revised its opinion and found that the armories may be affected as a consequence of the transformation of the 56th Brigade into a Stryker Brigade Combat Team, and that such effects should be considered in the Section 106 review.

In 2003, the ACHP was notified by the Pennsylvania Army National Guard (PAARNG) that it had been identified by the Secretary of the Army as one of six brigades designated for transformation into a Stryker Brigade Combat Team (SBCT) in accordance with the Army Transformation Campaign Plan. At that time, the ACHP responded with guidance for the PAARNG's independent Section 106 responsibilities for the undertaking aside from its responsibilities under the National Environmental Policy Act (NEPA).

In 2008, the ACHP received a letter from the Pennsylvania State Historic Preservation Officer (SHPO) requesting agency participation in the ongoing consultation for the 56th Brigade's transformation. The SHPO was concerned about the planned disposition of state-owned historic armories in anticipation of the construction of new readiness centers, as identified in the PAARNG's NEPA documentation. The PAARNG indicated that the disposal of the armories was related to a separate modernization initiative launched by the Commonwealth itself and was not related to the SBCT transformation. The SHPO's opinion was that the disposition of the armories was an undertaking for purposes of Section 106 because it was identified in



A Stryker vehicle from the 56th Stryker Brigade Combat Team, Pennsylvania National Guard, moves out to conduct joint operations during JRTC rotation 09-02 at Fort Polk, La. (Photo credit: Casey Bain, photo courtesy U.S. Army)

the SBCT transformation NEPA documentation for disposal. The SHPO requested the ACHP to participate in the consultation.

The ACHP began its formal evaluation process for the SBCT transformation and the PAARNG disposal of armories shortly thereafter with inquiries to the PAARNG and the National Guard Bureau (NGB), the federal agency representing state National Guards within the Department of the Army. In May 2009, the NGB provided the ACHP with its legal opinion regarding the undertaking. In summary, it was NGB's opinion that the federal government did not have either direct or indirect jurisdiction over the armories because there was no real estate interest in the properties and there was no federal undertaking under Section 106, as no federal funding was being provided for the disposal of the facilities.

In June 2009, the ACHP met with representatives from the SHPO, PAARNG, NGB, and the Department of the Army to discuss the NGB's opinion. Through continued assessment of the undertaking, the ACHP provided its own legal opinion to NGB and the SHPO in March 2010. This ACHP opinion stated that the primary issue was whether the disposition of the state-owned armories was reasonably foreseeable as a result of the SBCT transformation. If, at the time the NGB made the decision to provide funding to PAARNG, it truly did not know nor had reason to believe that armories may be demolished and/or transferred out of state ownership in order to accommodate the transformation, then such an unforeseeable outcome

would not have been part of the considerations under Section 106. Under such circumstances, the armories would have been outside the area of potential effects for the SBCT transformation.

The ACHP opinion further stated that the NGB cannot ignore past experience regarding what may happen as a consequence of the overall project receiving federal funds. If the agency, through its past experience and expertise, has reason to believe that a consequence usually follows a type of undertaking (e.g., vacating and demolition of old armories after federally funded construction of new readiness centers), the agency has two options. It can dismiss the foreseeable consequence from further consideration if it ascertains that the consequence is unlikely in a given circumstance, or it must consider the effects of that foreseeable consequence.

As part of this discussion, the ACHP also addressed an issue about the relevance of armory ownership that was raised in the NGB legal opinion. Ownership of the armories themselves is irrelevant to the issue of whether they fall within the scope of a Section 106 review. If it is reasonably foreseeable that the armories may be affected as a consequence of the undertaking, such effects need to be considered in the Section 106 review.

The reference to “direct or indirect jurisdiction” in the definition of an “undertaking” in the NHPA, 16 U.S.C. § 470w(7), has little to do with an agency’s ownership interest in a property. In the definition, “jurisdiction” refers to the relationship between the agency and the “project, activity or program.” The definition then proceeds to list specific instances of “project[s], activit[ies] or program[s]” that have such a jurisdictional relationship to an agency. Among them are those projects, activities or programs that are “carried out by or on behalf of the agency” and/or “carried out with federal financial assistance.”

When the NGB has the role of providing funding for an undertaking such as the transformation of a brigade, it has the requisite “direct or indirect” jurisdiction over the undertaking, since it is “carried out with [its] federal financial assistance.” Again, ownership over the properties that may be affected by the overall project itself has no relevance to this “jurisdictional” issue. Throughout its existence, Section 106 has included

consideration of historic properties that are privately or state owned. For example, the Federal Highway Administration routinely considers the effects of highway projects it funds on privately owned properties that are in, or in the viewshed of, the highway alignment.

The ACHP also refuted the other NGB contention that there is no federal undertaking since the federal government is not providing funds specifically for the disposal of these facilities. Since federal funds allow a third party to carry out an undertaking (e.g., brigade transformation), the federal agency must consider the reasonably foreseeable effects of that overall undertaking on historic properties, regardless of who ends up actually carrying out the disposition. So long as the disposition is a reasonably foreseeable consequence of the funded undertaking, it must be considered under Section 106.

The ACHP letter then requested NGB to reanalyze whether the effects of closure and disposal of state-owned armories would fall within the scope of Section 106 in the context of this SBCT transformation. In December 2010, NGB provided the ACHP with a revised opinion where it determined that Section 106 review of the SBCT transformation will include consideration of the disposition of the armories since such disposition was reasonably foreseeable.

NGB is currently working with PAARNG to complete consultation with the SHPO for the SBCT transformation to include the disposition of armories in Pennsylvania.

PENNSYLVANIA

Project: New Case: New Courthouse Site in Harrisburg

Agencies: General Services Administration

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Concluding a protracted and exhaustive site selection process to find the best possible alternative, the General Services Administration has selected a site for the new U.S. District Court for the Middle District of Pennsylvania.



A long and complex process resulted in this parking area being selected as the best alternative site for a new courthouse. (Photo courtesy GSA)

The existing Ronald Reagan Federal Building and Courthouse (FBCT) was built in 1966 adjacent to the state capitol and within walking distance of the tree-lined Harrisburg Historic District, listed in the National Register of Historic Places. The building serves several executive branch agencies, the United States Postal Service, and the General Services Administration (GSA). The U.S. District Court for the Middle District of Pennsylvania and related agencies including the U.S. Attorneys, U.S. Marshals Service, and the U.S. Trustees also occupy the building.

As caseloads increased in the 1990s, the courts struggled for sufficient space. The two original courtrooms were so busy that four temporary courtrooms were added in 1995 and 1996. While the public, judges, and prisoners had always shared the same hallways and elevators at the FBCT, they became crowded venues for informal exchanges among the groups. Based on the security standards outlined in the U.S. Courts Design Guide, the U.S. Marshals Service, and GSA Building Security Criteria, the groups were entitled to separate circulation paths and increased site security.

In 2004, GSA received authorization and an appropriation to acquire a site and design a new \$100 million, 262,970 square foot courthouse. The proposed courthouse was to provide eight courtrooms and space for the U.S. Attorneys, U.S. Marshals Service, and the U.S. Trustees. GSA estimated at least 2 1/2 acres for a building of 8-14 stories was required, along with land to allow a 50-100 foot security setback.

GSA's site selection criteria noted prospective sites must be within the Harrisburg city limits, in compliance with 28 U.S.C. § 118(b), Executive Order 12072 Federal

Space Management (1978), and GSA policy, which states that courts and court-related agencies should be located Downtown, in close proximity to other city, county, state, and federal government facilities.

Given the magnitude of the undertaking and the numerous historic districts within the city of Harrisburg, as part of informal and early consultation, GSA met with the ACHP and the Pennsylvania State Historic Preservation Officer (SHPO) in June 2005.

As GSA was coordinating Section 106 with the National Environmental Policy Act (NEPA) process, it subsequently advised the SHPO of the site selection status. In May 2006, upon receipt of notification from GSA and a SHPO letter requesting ACHP involvement, the ACHP chose to participate in GSA's consultations because the proposed undertaking might have substantial impacts on important historic properties and present important questions of policy and interpretation.

On July 14, 2006, in compliance with NEPA, GSA prepared and distributed a final Environmental Assessment (EA) that identified three site alternatives. The first site, at North 3rd and Forster streets, was located in a diverse and historic neighborhood near the Capitol Building, where the undertaking had the potential to adversely affect historic properties. The second site was located at North 6th and Verbeke streets, and included the non-historic Harrisburg Friends Meeting House and Cumberland Court, a subsidized housing complex. Were the undertaking to occur on this site, nearby historic properties could be adversely affected. A third site, located at North 6th and Basin

streets, was adjacent to the historic Bethesda Mission. However this third site was sufficiently separated from that property and other historic properties and would not affect their settings. In the final EA, GSA advised the SHPO, consulting parties, and the community that the site at North 6th and Verbeke streets was GSA's preferred alternative. When the Harrisburg community expressed concern, GSA conducted a rigorous evaluation of the replacement housing identified for the residents of Cumberland Court. GSA determined that suitable adequate replacement housing could not be provided economically.

Given the situation, in October 2006 the GSA Regional Administrator determined that none of the three sites identified in the EA would meet the equally important needs of the citizens, the immediate community, and the federal courts. At a public meeting in winter 2006, GSA explained to the community that it would be revising and verifying selection criteria and recommencing its site selection process. Size, location, and cost limitations would become more flexible, even though security and space requirements for the courts remained a constant. GSA Project Manager Abigail Low said, "Part of what allowed us to adjust our approach was the significant improvements in construction technology. New security materials and techniques offer an alternative to the deeper setbacks from the street once required. With these new criteria in hand, we refocused on the downtown."

GSA presented the results of its new site selection study to the community in February 2007, and provided bus tours of the sites to the community in May 2007, including one at North 6th and Reily streets. In June 2007, GSA selected two sites for the short list, one at 3rd and Pine streets, and another at 2nd and Locust streets.

Representatives from the City of Harrisburg said neither site was feasible; they said the site at North 6th and Reily streets was the only acceptable site for local economic reasons. As a result, GSA began working with the city to find a compromise. Specifically, GSA considered privatization of the existing FBCT, as well as its demolition and new construction on the FBCT site.

In October 2007, GSA leadership met with then-

U.S. Rep. James Oberstar, chairman of the House Transportation and Infrastructure Subcommittee, who requested that GSA review the FBCT site, as well as the North 6th and Reily streets site. GSA briefed Oberstar in January 2008, and then held a public hearing in Harrisburg in February 2008.

In April 2010 GSA Commissioner of Public Buildings Robert Peck considered alternatives in the EA, as well as the opinions of local officials, civic leaders, and the judges of the U.S. District Court for the Middle District of Pennsylvania. He determined that the courthouse should be located at North 6th and Reily streets.

In August 2010, GSA notified the SHPO that the North 6th and Reily streets site had been selected, and also provided the SHPO with an archaeological analysis. The SHPO concurred with GSA's finding that the proposed undertaking would not have an adverse effect on the adjacent Bethesda Mission nor any other historic properties. Due to the extraordinary efforts in Harrisburg, in November 2010 the ACHP notified GSA that it would not be participating in consultations, and that implementation of the undertaking in accordance with the plans would fulfill GSA's responsibilities under Section 106 of the National Historic Preservation Act.

Six years after authorization and appropriation for a new courthouse, GSA selected a site for construction of the new U.S. District Court for the Middle District of Pennsylvania which is adequate for the courts, serves the needs of the community, and avoids adverse effects to historic properties. GSA coordinated public participation for Section 106 and NEPA compliance, consulting early and often with interested parties on effects to historic properties. Construction of the new courthouse, now estimated to cost \$136 million, is slated to commence in 2013. At this time, GSA does not have any plans for the future use of the FBCT, which remains fully occupied.

For more information: www.gsa.gov/historicbuildings

WASHINGTON

Project: New Case: State Route 520 Improvements and Replacement of the Evergreen Point Bridge

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

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A project to replace the Evergreen Point Bridge and improve state Route 520 poses possible adverse effects to historic properties between Interstate 5 and Medina, Washington, including an island in Lake Washington of cultural importance to tribes in the region, an Olmsted-designed boulevard and arboretum, and historic neighborhoods. A Programmatic Agreement is being developed to guide mitigation, protection, and to minimize the impact of construction on historic properties.

The Washington Department of Transportation (WSDOT) and Federal Highway Administration (FHWA) propose to replace the aging Evergreen Point Bridge and expand state Route (SR) 520 to include six new traffic lanes over a 12.8 mile corridor from Interstate 5 in Seattle to SR 202 in Redmond. The purpose of the overall project is to enhance safety by replacing the deteriorating floating bridge that carries traffic over Lake Washington and to improve traffic flow through the corridor. Although the project will have many benefits, such as landscaped lids reconnecting historic neighborhoods that were bisected by construction of SR 520, the project will have an overall adverse effect on historic properties. The agencies are currently completing Section 106 review and consultation for the I-5 to Medina phase of this three-phase project.

FHWA and WSDOT initiated Section 106 consultation with the Washington State Historic Preservation Officer (SHPO) on the I-5 to Medina project in 2009. The ACHP became involved in July 2010. The ACHP's decision to participate was based on the large number of historic properties potentially affected, the project's complexity, and substantial public interest. On December 8, 2010, the ACHP participated in a Section 106 consultation in Seattle. The purpose was to provide consulting parties an opportunity to discuss FHWA's determination of



A portion of Evergreen Point Bridge viewed from the perspective of Lake Washington (Photo courtesy Washington Department of Transportation)

effects analysis and proposed measures to avoid, minimize, or mitigate effects to historic properties. The meeting was productive. However, some consulting parties expressed continuing concern about the project's impacts on historic neighborhoods and the Seattle Yacht Club.

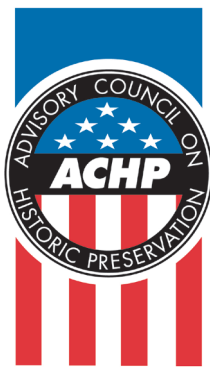
Altogether 345 historic properties have been identified in the project area of potential effects (APE), many located within the Roanoke Park and Montlake historic districts. In addition to the Portage Bay Bridge, which will be demolished and replaced, the project will affect individually eligible residential properties, the Seattle Yacht Club, the Montlake Bascule Bridge, Lake Washington Boulevard, the Washington Park Arboretum, and other properties of historic significance.

The project is located within lands and waters formerly occupied by Lakes Duwamish Indians, whose descendents are enrolled in several federally recognized Indian tribes, including the Muckleshoot Indian Tribe, Suquamish Tribe, Snoqualmie Tribe, the Tulalip Tribes, and the Yakama Nation, as well as the non-federally recognized Duwamish Tribal Services. Foster Island is part of the historic Washington Park Arboretum and a property of cultural and religious significance. FHWA and WSDOT have been working closely with the tribes to identify the project's effects on traditional practices and archaeological remains, and to find measures to resolve effects.

Due to the complexity of the project, its location in a residential urban corridor, and its long construction period, the project will have direct, indirect, and

cumulative effects on a variety of historic properties. The new bridge over Portage Bay will be much wider, and will have a visual impact on historic residential and non-residential properties with views of the bay (e.g. the Seattle Yacht Club). Construction of the new bridge and highway widening will occur over a period of six to seven years and will likely result in increased noise, dust, traffic, visual effects, and disruptions in access of areas near construction sites. To resolve these effects, WSDOT proposes to develop, in consultation with affected parties, a Programmatic Agreement (PA) that will include measures to minimize or mitigate effects on historic properties; and to develop a Community Construction Mitigation Plan that contains specific measures designed to protect historic buildings and address quality of life issues. Many local residents are represented by consulting parties.

In addition to the ACHP, SHPO, WSDOT, and FHWA, consulting parties include the following: the City of Seattle, Concerned Citizens of Montlake - SR520, Friends of Seattle's Olmsted Parks, the Historic Bridge Foundation, Historic Seattle Preservation Foundation, King County Historic Preservation, Montlake Community Club, NOAA, North Capitol Hill Neighborhood Association, Portage Bay/Roanoke Community Council, Saint Demetrios Greek Orthodox Church, Seattle Yacht Club, University of Washington, Washington Park Arboretum Foundation, Washington Trust for Historic Preservation, and the Indian tribes identified above.



Preserving America's Heritage

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