



ADVISORY COUNCIL ON HISTORIC PRESERVATION

CASE DIGEST

PROTECTING HISTORIC PROPERTIES: SECTION 106 IN ACTION



Spring 2007

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 administration's Preserve America initiative.

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Cover: Interstate 70 at the Georgetown-Silver Plume National Historic Landmark
(photo: J.F. Sato & Associates)

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

Project: New Case: New Toll Road Proposed in Orange and San Diego counties

Agencies: Federal Highway Administration (lead); U.S. Marine Corps

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The proposal for a new toll road in Orange and San Diego counties suggests a route that will pass through undeveloped lands in northern San Diego County currently set aside as a state park. The project, if built as proposed, will impact archaeological and ethnographic sites associated with the San Mateo Canyon Archaeological District, a property of traditional cultural and religious significance to Indian tribes in southern California. The project has been challenged in state court with complaints filed by a coalition of environmental organizations, the Native American Heritage Commission, and California State Parks and Recreation Commission.

The Transportation Corridor Agencies (TCA) was formed in 1986 to plan, finance, construct, and operate Orange County's 67-mile public toll road system. TCA has proposed construction of the South Orange County Transportation Infrastructure Improvement Project (SOCTIIP) to help reduce traffic congestion on Interstate 5 and must apply to the Federal Highway Administration (FHWA) for approval prior to construction of a new interchange accessing Interstate 5. TCA's preferred alternative for the project is construction of a new toll road that will extend state Route 241 in southern Orange County south to I-5 in northern San Diego County, passing through San Mateo Canyon and the San Onofre Beach State Park. San Mateo Canyon is located on property belonging to Camp Pendleton, a Marine Corps base, and is currently leased to the state of California for recreational use as part of the San Onofre Beach State Park.

Among the properties that will be adversely affected by the proposed route is the San Mateo Archaeological District, a property eligible for listing on the National Register of Historic Places. This district includes seven documented archaeological sites and appears to include the ethnographic village of Panhe, a property



San Onofre Beach State Park, CA

of traditional cultural and religious significance to the local Juaneno Indians. Four additional archaeological sites located elsewhere along the proposed corridor have been determined eligible for the National Register.

Although FHWA has not yet fully identified and evaluated historic properties that may be affected by the undertaking, it notified the Advisory Council on Historic Preservation (ACHP) in February 2007 of a finding that the proposed undertaking will likely have an adverse effect on historic properties. After initially declining to participate in consultation to resolve adverse effects, the ACHP reconsidered its decision after a meeting with the California State Parks Foundation (CSPF), who urged the ACHP's involvement. The ACHP notified the FHWA on March 28, 2007 that it would participate in consultation, and on April 11, 2007 ACHP staff participated in an on-site meeting with the FHWA, Marine Corps' Camp Pendleton, California State Historic Preservation Officer (SHPO), California Department of Transportation, and TCA's archaeological consultant to view the project area and potentially affected historic properties, and discuss the steps needed to complete the Section 106 review process. Indian tribes that have participated in consultation and other parties seeking to become formally involved in consultation (including the CSPF and the National Trust for Historic Preservation) did not participate in this meeting. At the meeting, the ACHP recommended FHWA develop a plan to identify and engage consulting parties before moving forward with

the Memorandum of Agreement (MOA); and, working with Camp Pendleton, formally reinstate consultation with Indian tribes to ensure that the agencies meet their required government-to-government responsibilities toward federally recognized tribes. Although much work has been done to date, the SHPO and the ACHP both recommended that FHWA and TCA develop additional information on historic properties in the area of potential effects and that they more clearly identify the potential effects of the project on those properties before engaging in discussions about mitigation.

complaints is the project's potential effects on Native American sacred sites.

Over the last few years, a number of Indian tribes have been consulted regarding the project including the Pauma Band of Mission Indians, Pechanga Band of Mission Indians, La Jolla Band of Mission Indians, Rincon Band of Mission Indians, Pala Band of Mission Indians, Soboba Band of Mission Indians, and the non-federally recognized San Luis Rey Band of Mission Indians, Gabrielino Band of Mission Indians, Gabrielino/Tongva Tribal Council, Ti'At Society, the Juaneno Band of Mission Indians, Juaneno Band of Mission Indians Ackachemen Nation Tribal Council, the Juaneno Band of Mission Indians Adjachemem Nation, Coastal Gabrieleno–Diegueno, and San Fernando Band of Mission Indians. FHWA will continue to work with tribes wishing to be actively involved in consultation as it considers means to avoid, minimize, and mitigate the project's adverse effects to historic properties.

FHWA's undertaking is limited to approving access to a new toll road from I-5. It has not been asked to provide funding for the project. The U.S. Army Corps of Engineers, U.S. Fish and Wildlife Service, and Environmental Protection Agency all have permitting responsibilities but had not participated in Section 106 consultation as of April 10, 2007.

There is significant controversy in the proposed project, including, but not limited to, concerns about the protection of historic properties, protection of endangered species, and protection of water quality at San Onofre State Beach (also known as the Trestles), one of the state's premier surfing beaches. As of April 2007, three complaints have been filed in California state court challenging decisions made under the requirements of the California Environmental Quality Act. Among the environmental issues raised in these

COLORADO

Project: Ongoing Case: Update: Expansion of the Interstate 70 Corridor

Agencies: Federal Highway Administration

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Interstate 70 across Colorado is the major east-west highway corridor linking Denver and many Colorado mountain communities. The highway traverses several historic communities, including the Georgetown-Silver Plume National Historic Landmark and the Hot Springs Historic District in Glenwood Springs. The I-70 mountain corridor is the primary route from Denver to the state's major ski areas, and weekend traffic in both summer and winter is heavy. As part of a tiered environmental review process, the Federal Highway Administration and the Colorado Department of Transportation are considering alternatives to reduce congestion and improve traffic flow on the I-70 mountain corridor. Since all proposed alternatives will be built within the existing right-of-way, relatively few historic properties will be physically impacted directly. However, increased noise and visual effects on the historic districts are expected.

Much progress has been made since this case was last updated in the Winter 2006 Case Digest at www.achp.gov/casedigest.html. The Federal Highway Administration (FHWA) and the Colorado Department of Transportation (CDOT) have continued to work with the Section 106 consulting parties to address concerns about effects of the proposed improvements to Interstate 70 on the historic mountain communities along the corridor. After a difficult start, CDOT hired a consultant to facilitate Section 106 consultation and develop the Section 106 Programmatic Agreement (PA). Interviews with individual consulting parties and two consultation meetings with all parties served to identify issues to be addressed in the PA. These meetings took place in Silver Plume on February 13, 2006, and in Idaho Springs on March 15, 2007. A final draft PA was completed in February 2006, but execution of the agreement was put off because of a delay in publication of the final Programmatic Environmental Impact Statement (PEIS) for the project.



Interstate 70 at the Georgetown-Silver Plume National Historic Landmark (photo: J.F. Sato & Associates)

FHWA and CDOT developed a PA that addresses the National Environmental Policy Act (NEPA) review process in a manner that provides for the comprehensive consideration of direct effects as well as indirect and cumulative effects of the project on historic properties, including two National Register Historic Districts and the Georgetown-Silver Plume National Historic Landmark District. Direct physical impacts will be minimal, as all alternatives are within the existing right-of-way. The primary concerns to consulting parties—and the focus of the PA and PEIS—are noise impacts, visual effects, and the effect of increased traffic and construction on the economic viability of the communities as heritage tourism sites.

This case is important because it represents a new approach by FHWA in doing Section 106 consultation for projects in which it conducts a “tiered” environmental review process. Tiering NEPA review allows FHWA to make broad decisions about a proposed project and then later (in Tier 2 projects) design the project for each phase of construction over the next 20 to 50 years. FHWA divisions do not normally consult at the Tier 1 phase; however, in this instance, FHWA worked with consulting parties to consider the relative effects of alternatives under consideration in Tier 1 and developed a process and guidelines for Section 106 consultation on Tier 2 projects.

The first tier is development of a PEIS and Record of Decision that selects a transportation mode (or

modes) for future improvements along the I-70 mountain corridor over the next 50 years. As a result of coordination of Section 106 and NEPA for this project, the final PEIS for Tier 1 will include a separate section summarizing and evaluating the relative effects of the undertaking on historic properties, reflecting input from the consulting parties. The second tier will be development of additional, more detailed environmental review documents for the design and construction of individual segments of the 144-mile-long corridor.

The final draft PA should serve as a model for both early coordination of Section 106 and NEPA and completing Section 106 review for large transportation projects involving multiple tiers and complex considerations. The PA includes a number of innovative measures to mitigate the effects on historic properties, including developing a historic context, or contexts, for the mountain corridor; involving the Section 106 consulting parties in designing Tier 2 undertakings; using the principles of “context sensitive solutions;” implementing measures to improve existing conditions that diminish the integrity of historic districts along I-70; and following guidelines developed by consulting parties for assessing the visual, audible, and economic impacts of Tier 2 undertakings on the historic districts.

Signatories to the PA will be FHWA, CDOT, Colorado State Historic Preservation Officer, and the Advisory Council on Historic Preservation. The U.S. Forest Service (Rocky Mountain Region) and the Bureau of Land Management (Glenwood Springs Field Office) have been invited to be signatories to the agreement.

Parties that have participated in consultation and have been invited to concur in the PA include: Clear Creek County; Eagle County; city of Glenwood Springs; town of Georgetown; town of Silver Plume; Georgetown Silver Plume Historic District Public Lands Commission; National Park Service, Intermountain Region; Colorado Preservation, Inc.; National Trust for Historic Preservation, Mountain Plains Office; Historic Georgetown, Inc.; the Historical Society of Idaho Springs; and Mill Creek Valley Historical Society.

CDOT and its consultants are working with the consulting parties to address final comments on the PA and hope to circulate the PA for signature this

spring. No date has been set for release of the final Tier 1 PEIS.

LOUISIANA

Project: Closed Case: FEMA Funding for New Holy Cross School Campus

Agencies: Federal Emergency Management Agency, Department of Homeland Security

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The Federal Emergency Management Agency (FEMA) plans to provide funding through its Public Assistance Grant Program to Holy Cross School, a private academy for boys, which was damaged by Hurricanes Katrina and Rita and subsequent flooding. The school will use FEMA funds to vacate its current campus, which contributes to the National Register-listed Holy Cross Historic District, located in New Orleans' Lower Ninth Ward, and move to Gentilly, where the school plans to construct a new campus. The school is negotiating the purchase of the new campus site from the Catholic Archdiocese of New Orleans. On the site are several buildings, which the archdiocese will demolish, including the 1964 St. Francis Xavier Cabrini Catholic Church. FEMA has determined in consultation with the Louisiana State Historic Preservation Officer that the church is eligible for listing in the National Register of Historic Places. The undertaking will result in adverse effects to the Cabrini Church.

Holy Cross School, a private academy for boys located in New Orleans' Lower Ninth Ward, is set to receive money from the Federal Emergency Management Agency (FEMA) through its Public Assistance Grant Program. Controversy surrounding the FEMA funding to date has focused on the demolition of St. Francis Xavier Cabrini Catholic Church, on the site where Holy Cross School plans to move and construct its new campus. FEMA determined the church is eligible for listing on the National Register of Historic Places. Nevertheless, many members of the public questioned FEMA's determination that the church is National Register-eligible through its architectural significance. It is a unique design from the New Orleans architectural firm of Curtis & Davis, the firm that designed the Louisiana Super Dome. To bolster its finding, FEMA hired expert consultants to evaluate the building in more detail. Based upon this additional study, FEMA



The 1964 St. Francis Xavier Cabrini Catholic Church will be demolished to allow development of the new site for Holy Cross School.

maintained its determination that the church is eligible for listing in the National Register. To help move the Section 106 review process forward, the Louisiana State Historic Preservation Officer (SHPO) concurred with FEMA's determination in late January 2007. FEMA then invited the Advisory Council on Historic Preservation (ACHP) to participate in consultation to resolve adverse effects.

In addition to Cabrini Church, two schools that are unaffiliated with Holy Cross School currently occupy the proposed 16-acre campus site in Gentilly. Following the demolition of the church and the two schools, the New Orleans Catholic Archdiocese proposes to sell the property to Holy Cross School, which would then redevelop the land for its new campus. FEMA determined the archdiocese's plan to demolish the church is part of its proposed undertaking and would therefore be subject to Section 106.

A local historic preservation group, Friends of Cabrini Church, formed in response to the proposed demolition. Additionally, several other individuals and organizations also supported saving the building. These included the National Trust for Historic Preservation (NTHP); the American Institute of Architects (both the national office and the local chapter); some former Cabrini parishioners; and several local architectural historians. Proponents for preserving the church argued the building is architecturally significant, and also they believed Holy Cross School's plans for the new campus

site could incorporate the church for re-use as an auditorium, campus chapel, or multi-use facility.

Opponents to preserving Cabrini Church included Holy Cross School officials and residents of two Gentilly neighborhoods who were extremely concerned about the future of their locality. The residents believe Holy Cross School will signal the renewal of their neighborhoods. They also have argued that the survival of the two neighborhoods is more important than the preservation of the 1960s-era church.

Beginning in early February 2007, FEMA hosted five consultation meetings with the ACHP, Louisiana SHPO, Holy Cross School, Archdiocese of New Orleans, NTHP, Friends of Cabrini Church, two neighborhood organizations, and representatives of New Orleans city government. A major goal was to develop treatment measures to avoid, minimize, or mitigate the undertaking's adverse effects to Cabrini Church. Friends of Cabrini Church remained adamant that the building be preserved either to serve as a house of worship or be used for educational purposes at Holy Cross School.

Conversely, Holy Cross School administrators and the architect of the new campus maintained that adaptive re-use of the church would not be feasible because: 1) Hurricane Katrina had damaged the building; 2) the 43-year-old church is sorely outdated in terms of its mechanical and electrical systems; and, 3) the building is too large for the proposed school's needs. Additionally, the administrators believed preservation would sacrifice acreage needed for the school campus and would be accomplished only at tremendous cost to the school. For example, Holy Cross School officials estimated it would cost \$6.25 million (or 25 percent of the total \$25 million budget for creating the new campus) to repair and rehabilitate the church.

Besides the five consultation meetings, FEMA conducted a public meeting at the University of New Orleans. It is estimated more than 300 individuals attended, with approximately half representing the two neighborhoods and half consisting of Holy Cross students, their parents, and alumni. Several individuals spoke in favor of preserving Cabrini Church, including representatives of Friends of Cabrini Church and the NTHP. However, an overwhelming majority of those

who spoke at the public meeting stated their opposition to preserving the building, especially if it meant overall recovery in the two neighborhoods would be slowed, or if saving the church meant losing Holy Cross School. Following the conclusion of the fifth consultation meeting, where a draft Memorandum of Agreement (MOA) was reviewed by consulting parties, FEMA finalized the MOA and circulated it for signature. In addition to FEMA, the Louisiana SHPO and the ACHP were signatories, while concurring parties included the archdiocese, Holy Cross School, and the Governor's Office of Homeland Security and Emergency Preparedness. Signed by ACHP Executive Director John Fowler on March 20, 2007, the MOA's mitigation measures include architectural and engineering documentation of the building; archival storage of historic records and materials related to the church; development of a plan for commemorating the history of Cabrini Church; and development of a plan for the re-use of architectural elements from the church at the proposed Holy Cross School campus. The church is planned to be demolished, although the final date has yet to be determined.

A *Times-Picayune* article from March 22, 2007 showed Louisiana Lieutenant Governor Mitch Landrieu's validation of the Section 106 process. "This was one of those great wins that I believe that was achieved through a tremendous amount of patience, a tremendous amount of listening and a tremendous amount of trying to build a consensus around some very sensitive issues," he said. "I came today to say thank you to all the individuals who worked tirelessly over the past couple of months, working through some very, very difficult, sensitive issues dealing with schools, neighborhood reorganization, historic preservation and honoring the (Section) 106 review process (of the National Historic Preservation Act) that has been in place for a very, very long time period of time."

MONTANA

Project: Ongoing Case: Great Falls Power Plant Construction

Agencies: Rural Utilities Service, U.S. Department of Agriculture (lead); National Park Service

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A proposed 250-megawatt coal-fired power plant with a 400-foot-tall cooling tower with four 262-foot-high wind turbines is proposed at a location that would place the facility both partially within and adjacent to the Great Falls Portage National Historic Landmark (NHL). The preferred placement alternative in USDA's Rural Utilities Service Final Environmental Impact Statement has the potential to have an adverse effect on historic properties. There is considerable conflict in the case with many consulting parties concerned about the preferred site. The Advisory Council on Historic Preservation (ACHP) has issued comments and has requested the National Park Service prepare a Section 213 report to help the ACHP better understand the proposed project's effects on the NHL and develop appropriate measures to avoid, minimize, or mitigate adverse effects.

The Southern Montana Electric Generation and Transmission Cooperative, Inc. (SME) proposes to build a 250-megawatt coal-fired power plant and construct four wind turbines north of Great Falls, Montana. The plant would include a 400-foot-tall cooling tower with four wind turbines on 262-foot-tall poles, construction of rail lines, access roads, and transmission lines. The location of the preferred alternative in Rural Utilities Service's Final Environmental Impact Statement, issued in January 2007, would place the power plant within and adjacent to the Great Falls Portage National Historic Landmark (NHL). SME has requested financial assistance from the Rural Utilities Service (RUS) of USDA Rural Development, moving the proposal into the realm of a federal undertaking. The development of the power plant and wind turbines has the potential to have an adverse visual affect on historic properties.

The Great Falls Portage NHL is the location where the



View of the proposed location of the Highwood Generation Station near Great Falls, Montana looking east.
(photo: Amy Cole, National Trust for Historic Preservation)

Lewis and Clark expedition encountered one of the most difficult portions of their trip westward. In 1805 on its way upstream, the Corps of Discovery took 31 days to cover the 18-mile portage around the Great Falls on the Missouri River.

The Advisory Council on Historic Preservation (ACHP) was notified by USDA officials in June 2006 about potential adverse effects to an NHL and formally entered consultation on July 12, 2006. The ACHP provided written comments to the RUS on March 2, 2007. Other consulting parties include the Montana State Historic Preservation Officer, National Trust for Historic Preservation (NTHP), Montana Preservation Alliance, National Park Service' (NPS) Intermountain Regional Office of the National Historic Landmarks program, NPS's Lewis and Clark National Historic Trail, and Lewis and Clark Trail Heritage Foundation. Two meetings of the consulting parties have occurred: on October 5, 2006, and March 7, 2007.

RUS and SME are presently engaged in consultation to resolve adverse effects. Many of the consulting parties, including the NPS and NTHP, do not feel this is an appropriate location for the construction of the power plant and think the RUS and SME have not adequately considered avoidance of this site and locating the plant at an alternative site. Meetings with the consulting parties raised concerns that construction of the power plant at the proposed location within and adjacent to the NHL would result in irreversible harm to the

undeveloped nature of the site, which is a component to the integrity of setting, feel, and association. Consulting parties have expressed concern that significant impacts to the integrity of the site threaten its continued listing as a National Historic Landmark.

RUS acknowledges, "the NHL's integrity is based predominantly on the visual landscape qualities that are very similar to that which existed when the Corps of Discovery traveled through the area in 1805."

The ACHP in its comments expressed that the importance of protecting the integrity of this NHL cannot be overemphasized, that National Historic Landmarks are premier historic properties in our nation and deserve the greatest possible consideration and maximum effort to avoid and minimize adverse effects to them.

In March 2007, the ACHP requested that the National Park Service prepare a Section 213 report on the Great Falls Portage NHL to assist the ACHP in better understanding the project's effects to this National Historic Landmark. The ACHP specifically has asked the NPS to address the following:

- what makes this site unique and important on a national level;
- how the proposed project may affect the integrity of the NHL;
- recommended measures to avoid, minimize, or mitigate adverse effects to the NHL; and,
- whether the adverse effects from the proposed power plant would threaten the continued designation of this property as a National Historic Landmark or require adjustments to the current boundary.

The ACHP awaits receipt of the Section 213 report from the NPS, and consultation to resolve adverse effects continues.

RUS, the applicant, and other consulting parties have suggested a number of options to minimize visual effects including: 1) moving the plant location outside, but still adjacent to, the boundary of the NHL; 2) incorporating landscape design elements and buffers appropriate and consistent with the local landscape; 3) using appropriate earth tones and color

on buildings and facilities; 4) locating transmission lines underground or along existing telephone and transmission line corridors within the NHL and its viewshed; and, 5) purchasing historic preservation easements of lands around the NHL to protect the viewshed and provide a buffer against future development.

SME has offered to fund one or more of the following bulleted projects, up to the sum of \$555,000 as agreed to by the consulting parties. SME's cost cap of \$555,000 is proposed to be a yearly expenditure of \$16,000 over the estimated 30-year life of the facility and a one-time payment of \$75,000:

- If available, contribute to the acquisition of the property surrounding the Lewis and Clark staging area location or allow the property to revert back to native vegetation to give visitors a sense of the landscape during the time of the portage.
- If available, contribute to the acquisition of properties across the Missouri River from the Lewis and Clark Interpretative Center to create and preserve a more natural landscape and viewshed for an enhanced visitor experience.
- Assist in funding the renovation of the Lewis and Clark Interpretative Center Library and Lewis and Clark Trail Heritage Foundation Headquarters.
- Assist in and set up an annual contribution to help further and maintain educational programs related to or part of the Interpretative Center's activities.
- Provide in-kind energy services to the Lewis and Clark Interpretive Center, if they can be legally accepted.

The RUS is planning to issue a National Environmental Policy Act Record of Decision in the near future, followed by a final agency determination in summer 2007 of whether to approve the request for financial assistance.

For more information:

www.greatfallstribune.com

www.usda.gov/rus/water/ees/eis.htm

www.fs.fed.us/r1/lewisclark/lcic/

www.cr.nps.gov/nr/travel/lewisandclark/gre.htm

PENNSYLVANIA

Project: New Case: Transfer of Philadelphia Post Office Complex to University of Pennsylvania

Agencies: U.S. Postal Service (lead), Amtrak, General Services Administration

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Although the United States Postal Service began negotiating to transfer the majority of the Philadelphia Post Office Complex—including the Main Post Office which is listed on the National Register of Historic Places—to the University of Pennsylvania in 2004, it did not initiate the Section 106 process until December 2006. The University of Pennsylvania intends to lease the transferred property to a development company that plans to rehabilitate, demolish, and/or redevelop sections of the property. There are potential adverse effects to known and unknown historic properties. A Programmatic Agreement is being developed to safeguard these resources.

The United States Postal Service (USPS) is transferring the majority of the Philadelphia Post Office Complex, including the Main Post Office, a terminal annex building, and a 14-acre parking lot, to the University of Pennsylvania. The greater part of USPS operations once housed in the Main Post Office have been moved to a newly built Processing and Distribution Center near the Philadelphia International Airport, and all that remains in the Main Post Office is a retail operation that will be moved to a newly renovated USPS vehicle maintenance facility building just south of the existing complex.

The University of Pennsylvania plans on leasing the property to a development company that will in turn lease portions of the property to various other lessees for either rehabilitation or new development. The Main Post Office building will be leased to the General Services Administration (GSA), which intends to lease the property to the Internal Revenue Service to become a regional service facility. The terminal annex building and parking lot will be demolished and redeveloped for commercial and residential purposes.

While the initial transfer effort does not appear to threaten two identified archaeological sites, these known



This view of the Market Street entrance of the National Register of Historic Places listed Main Post Office in Philadelphia shows one of the more important structures on the land being transferred to the University of Pennsylvania.

areas could be severely impacted by future development. To mitigate future actions, a Programmatic Agreement (PA) is being developed to ensure future rehabilitation of the Main Post Office and future development on the terminal annex building and parking lot sites, will adhere to the Secretary's Standards and not adversely impact surrounding historic properties.

This case is an excellent example of why it is important to start the Section 106 process early. When the USPS first decided to build the Processing and Distribution Center in 1998, they informed the Pennsylvania Historical and Museum Commission (PHMC) that the Main Post Office would be adaptively reused but failed to further contact the PHMC until December 2006 during the last six months of the project. While both USPS and the University of Pennsylvania want to complete escrow by May 2007, the USPS must wait until the Section 106 process is completed, and that entails the development of the PA. The effects of the new development by the University of Pennsylvania or its designees will not be known prior to the sale of the property, and non-federal parties will be delegated to undertake major historic property stewardship responsibilities. The USPS has been made aware that

the PHMC and the Advisory Council on Historic Preservation (ACHP) will work as quickly as possible to develop and execute this PA by the end of May 2007 with the identified consulting parties, but that the Section 106 process cannot be circumvented to meet that deadline. This process almost certainly would have been completed before now if the USPS had initiated Section 106 at the outset. Fortunately, there do not appear to be major points of conflict to resolve in this case.

Consulting parties in this case include the ACHP, which became involved in December 2006, USPS, GSA, Amtrak, University of Pennsylvania, Brandywine Realty Trust, Drexel University, Keating Development Company, PHMC, and the Philadelphia Historical Commission.

SOUTH DAKOTA

Project: Closed Case: Custer National Forest Oil and Gas Leasing

Agencies: U.S. Department of Agriculture, Forest Service, Custer National Forest; Department of the Interior, Bureau of Land Management

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The North Cave Hills, South Cave Hills, and Slim Buttes area located north and west of the Paha Sapa (Black Hills) in South Dakota are rich with sites long important to a number of northern Great Plains Native American nations. One of the specific sites is listed on the National Register of Historic Places, and many are eligible for listing. An innovative Programmatic Agreement creates a “Programmatic Agreement Working Group” made up of Forest Service, Bureau of Land Management, State Historic Preservation Officer, and tribal representatives who will review proposed leasing parcels to consider potential effects to historic properties and cultural resources of traditional religious and cultural importance. The working group provides input about the location of historic properties and makes recommendations about effects and avoidance.

The Forest Service (FS) and Bureau of Land Management (BLM) propose to issue oil and gas leases on the Sioux Ranger District of the Custer National Forest. Portions of the Sioux Ranger District include units (North Cave Hills, South Cave Hills, Slim Buttes) that contain significant archaeological and historic properties, as well as traditional cultural properties and sites sacred to a number of northern plains Native American tribes. Oil and gas development in these units has the potential to adversely affect these important properties and places through the construction and development of drilling and transportation infrastructure, as well as the introduction of audible and visual intrusions and associated atmospheric and seismic effects on the lands and sites related to oil and gas drilling and removal.

The land units of concern contain one of the richest concentrations of significant archaeological sites within the northwestern Great Plains, including a unique

and wide variety of bison jumps, rock shelters, deeply stratified camp sites, stone circles, fasting beds, eagle trapping lodges, and Ludlow Cave, which is sacred to many northern Plains tribes. In addition, there are 43 petroglyph sites in the project area that are important for their significance as traditional cultural properties and archaeological uniqueness.

These places are a well-preserved record of the long history of use and occupation by Native American peoples. The traditional cultural properties and sacred sites are important to preserving the history and maintaining the identity, traditions, and relationship to the land of Native Americans in the region.

In issuing its National Environmental Policy Act (NEPA) decision, the FS has chosen to make all lands available for leasing, but with a No Surface Occupancy (NSO) stipulation in areas with sensitive cultural resources. As a result of the NSO, oil and gas development may still occur via directional drilling to access subsurface oil and gas deposits from adjacent, non-FS lands.

The Advisory Council on Historic Preservation (ACHP) became formally involved in the consultations in September 2006. Other consulting parties include the FS, BLM, Cheyenne River Sioux Tribe, Standing Rock Sioux Tribe, Lower Brule Sioux Tribe, Rosebud Sioux Tribe, Mandan, Hidatsa, and Arikara Nation, South Dakota State Historic Preservation Officer (SHPO), and the National Trust for Historic Preservation. In October 2004 a final Environmental Impact Statement



For millennia successive waves of Native Americans used Ludlow Cave as a place of shelter or reverence. This unique image of a buffalo survived the inscriptions of other cultures and modern graffiti as part of the record of this register of the northern Great Plains.



The serene beauty and significant heritage sites of the North Cave Hills, South Cave Hills, and Slim Buttes areas north of the Black Hills of South Dakota will be protected from some adverse affects of federal oil and gas leases by an innovative Programmatic Agreement.

(EIS) was issued for oil and gas leasing on the Sioux Ranger District of the Custer National Forest that identified the sensitive areas as “not available for leasing” as the preferred alternative. In June 2005 the FS issued a revised final EIS with all areas available for leasing, but with an NSO designation as the preferred alternative for portions of the project area with significant historic preservation concerns. Consultation meetings in August, September, and November 2006 and January 2007 were instrumental in crafting the details of the agreement and working out the process for consulting with a “Programmatic Agreement (PA) Working Group.” In March 2007, the PA was signed and executed by the FS, BLM, SHPO, and the ACHP, with the consulting tribes invited to sign.

The PA calls for the formation of a “Programmatic Agreement Working Group” made up of FS, BLM, SHPO, and tribal representatives to review proposed leasing parcels to consider potential effects to historic properties and cultural resources of traditional religious and cultural importance at three stages of the leasing process: Phase 1) oil and gas lease decision; Phase 2) allocation, lease parcel verification and sale; Phase 3) oil and gas exploration and development. Based on their review, the working group provides input about the location of historic properties and makes recommendations about effects and avoidance. The use

of this working group at all three stages of the oil and gas lease process permits broad review of parcels at the scale most appropriate to the scale of the undertaking and the scale of the historic property. Most notably, review at the lease decision scale takes into account and more easily permits avoidance of concerns related to traditional cultural properties and other landscape or historic district level historic properties.

This PA was developed through numerous intensive consultation meetings and review and consideration of many drafts and comments of all the consulting parties. The success of the agreement is a reflection of a consultation process that was very proactive and collaborative. Development of this PA and the success of its implementation were and are strongly focused on tribal participation as preservation partners alongside the FS, BLM, and SHPO.

The agreement by the FS and BLM to complete Section 106 consultation at the earlier “leasing” stage rather than the subsequent “application for permit to drill” stage allowed the agencies and consulting parties to identify better options to avoid or minimize effects to historic properties. The FS and BLM’s agreement to meet their Section 106 responsibilities prior to issuing a lease is in accordance with recent court rulings that have required agencies to treat leases as undertakings with the potential to affect historic properties. This agreement and the consultation effort that produced it may serve as a useful example of how agencies that are confronted with phased leasing and permitting responsibilities on federal lands can successfully complete the Section 106 process at the leasing stage.

VIRGINIA

Project: Closed Case: Modification of Broad Run Bridge, Prince William County

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

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On December 16, 2006, the Advisory Council on Historic Preservation concluded a Memorandum of Agreement (MOA) with the Federal Highway Administration, Virginia Department of Transportation, and the Virginia State Historic Preservation Officer for the Route 15/29 southbound bridge deck replacement over Broad Run (the Buckland Bridge Project). The Buckland Preservation Society was a concurring party to the MOA, which brought to conclusion a lengthy and often contentious consultation process for this unusual bridge deck replacement project. This case was last featured in the Spring 2005 Case Digest at www.achp.gov/casedigest.html.

Considered one of the most intact early communities in Virginia, the Buckland Historic District includes a late-18th century village site that was an early stagecoach town and later featured one of the country’s first turnpikes. The area also includes the Civil War-era Buckland Mills Battlefield and the piers of a historic stone bridge that are eligible for the National Register of Historic Places. With funding from the Federal Highway Administration (FHWA), the Virginia Department of Transportation (VDOT) wants to widen the deck of the southbound Route 15/29 bridge over Broad Run, a bridge that bisects Buckland’s historic village. Considered a minor project by VDOT, the transportation agency was initially unaware that the proposed bridge deck replacement might raise concern among organizations wanting to protect the integrity of the battlefield and historic village.

FHWA invited the Advisory Council on Historic Preservation (ACHP) to participate in consultation in February 2005 to assist in resolving disagreements among consulting parties on the area of potential effects, as well as the level of effort to identify historic properties and the range of alternatives considered. Others participating were VDOT, Virginia State

Historic Preservation Officer, Manassas National Battlefield Park, American Battlefield Protection Association, National Trust for Historic Preservation, Civil War Preservation Trust, Piedmont Environmental Council, Buckland Preservation Society, and Prince William County.

On September 16, 2005, FHWA requested the ACHP's views on a finding of no adverse effect (NAE) for the undertaking. All consulting parties except the FHWA and VDOT objected. The ACHP commented on October 18, 2005 that the project may have an adverse effect and result in cumulative impacts to historic properties. The parties ultimately agreed to document a series of mitigation measures in a Memorandum of Agreement (MOA), although FHWA continues to consider the effects to be not adverse.

This comprehensive agreement represents the culmination of extensive consultation among the parties. Despite its initial concerns about project modifications, VDOT eventually put in a considerable effort to address each of the consulting parties' concerns. Concerns about potential impacts to archaeological resources associated with the battlefield and historic Buckland were addressed through the review of historical maps and documents and an expansive archaeological survey of areas that will be subject to ground disturbance. Concerns about visual effects and the potential for the project to contribute to increased traffic noise and congestion along Route 15/29 were addressed by redesigning the project to: 1) reduce the width of the proposed new bridge deck (from 42' to 36'); 2) use a guard rail more sensitive to the cultural context; and, 3) adopt an innovative "modular accelerated bridge construction" technique that allows VDOT to eliminate construction of a temporary traffic lane during project construction.

Consulting parties remain concerned about the cumulative impact of increased traffic and sprawl on these two historic properties. The Civil War battlefield and historic village site comprise a small oasis located in an area of rapid commercial and residential development and ever-increasing traffic. However, through changes in the project design, and a commitment to participate in the master plan development for the Buckland Historic District, VDOT has been able to avoid contributing,



Buckland Mill, Buckland, VA
(photo: Buckland Preservation Society)

at least for this project, to these ongoing threats to the setting of Buckland's historic qualities.

The application of cumulative effects analysis was debated during consultation, revealing different views of what is required by the Part 800 regulations in assessing cumulative effects on historic properties. While FHWA did not agree with the ACHP that a bridge deck replacement could contribute to the cumulative effects of increased traffic and development pressure on the Buckland historic properties, FHWA and VDOT were willing to conduct a traffic study and work with the consulting parties to redesign the project to minimize potential impacts. In the end, the parties were pleased with the outcome, and the agreed-upon alternative will take less time to construct, at only slightly higher cost than the original proposal.

VIRGINIA

Project: Ongoing Case: Fort Monroe
Programmatic Agreement

Agencies: U.S. Army (lead); National Park Service

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Fort Monroe, a National Historic Landmark, is being closed as an Army post under the 2005 Base Realignment and Closure legislation. One of the oldest extant military facilities in the United States, it played a key role during and after the Civil War. At present, more than 30 consulting parties are working under Section 106 to create a Programmatic Agreement for long-term management of the historic resources as Fort Monroe is converted to new uses.

Under the 2005 Base Realignment and Closure (BRAC) legislation, Fort Monroe, an active Army installation, will close in Fiscal Year 2011. The installation covers 570.3 acres, of which 288.15 acres will revert to Virginia, and the Army will retain 282.15 acres. It is currently still being used to its capacity as of this printing of the ACHP's Case Digest.

In its entirety, Fort Monroe is a National Historic Landmark. There are at present three privately owned structures on the installation: the Chamberlin Hotel, St. Mary Star of the Sea Catholic Church, and the Old Point Comfort Lighthouse (still in use by the Coast Guard). The city of Hampton's Federal Area Development Authority has been approved by the Department of Defense as the Local Redevelopment Authority—the official entity responsible for developing a reuse plan for the property.

There is a great deal of local and national interest in the outcome of this closure action and the subsequent reuse of the property. This is reflected by the number of consulting parties, which is approximately 30. The Advisory Council on Historic Preservation officially became involved in Section 106 proceedings in February 2006. Consulting parties include the Citizens for a Fort Monroe National Park, Inc., the Civil War Preservation Trust, the Virginia Department of Historic Resources,



2004 aerial photograph of Fort Monroe

the Commonwealth of Virginia, the National Park Service, the National Parks Conservation Association, the National Trust for Historic Preservation, the National Historic Landmark Stewards Association, the Virginia Council of Indians, the Absentee-Shawnee Tribe of Indians of Oklahoma, the city of Hampton, the Shawnee Tribe, the Contraband Historical Society, and others.

In the early 17th century, Fort Monroe was a coastal fortress with related outbuildings and structures. Its purpose was principally to serve as a defense against enemy attack. According to the city of Hampton's Web site, Fort Monroe is the third oldest active military installation in the nation. During the Civil War, Fort Monroe was one of only a few Union forts in the states seceding from the United States that were not taken over by the Confederacy. Earning the nickname "Freedom's Fortress," it was here that Major General Benjamin Butler refused to return escaped slaves to their owners, terming the former slaves "contraband." Classifying former slaves as "contraband" offered an interim legal justification for not returning them to slaveholders since doing so would aid the cause of the rebellious states. After the Civil War, Fort Monroe imprisoned Confederate President Jefferson Davis for some time. Off the Virginia coast near Fort Monroe, the famous battle between the USS *Monitor* and CSS *Virginia* (the former USS *Merrimac*) occurred.

As noted, Fort Monroe is registered as a National

Historic Landmark. The Chamberlin Hotel is a contributing element to the landmark, as are St. Mary Star of the Sea Catholic Chapel and rectory. The Old Point Comfort Lighthouse is both a contributing element of the landmark and individually listed on the National Register of Historic Places.

For more information:

www.hampton.gov/fort_monroe/facts.html
www.monroe.army.mil/monroe/sites/local
www.cfmnp.org

WAKE ISLAND

Project: New Case: Wake Island Airfield Conversion to Caretaker Status

Agencies: U.S. Air Force (lead), National Park Service

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Wake Island Airfield is a cultural landscape comprised largely of World War II ruins but also contains remnants of the development of trans-Pacific airline service before WW II and during the Cold War era that followed. The entire Wake Island atoll inside its coral reefs is a National Historic Landmark. The U.S. Air Force has not had a mission at the airfield for some time but has operated it for others. The Air Force is now proposing to move the island to “caretaker status,” with some structures slated for demolition and removal. The Air Force plans to create a Programmatic Agreement to govern historic preservation considerations during this effort.

What is generally referred to as Wake Island is actually an atoll made up of three neighboring islands—Wake, Wilkes, and Peale—plus the lagoon they surround. The Air Force proposes to move Wake Island atoll to “caretaker status,” the equivalent of mothballing the site while still maintaining it in the event of future strategic needs. As in any project of this scope and complexity, there is the potential for adverse effect. The demolitions proposed for some buildings do not relate to structures currently assessed as contributing to the National Historic Landmark (NHL); however, some resources may need to be re-evaluated to be sure of their status. The Air Force plans to create a Programmatic Agreement (PA) to sort out this complex undertaking that also will consider the need for long-term monitoring and maintenance. Complicating the issue is the aftermath of Super Typhoon Ioke which struck the atoll on August 31, 2006, damaging many resources. While damage was assessed at \$88 million, the storm also removed sand that had hidden a few other resources.

The Advisory Council on Historic Preservation (ACHP) was notified of the undertaking in March 2007. The key federal agency is the U.S. Air Force, with the National Park Service (NPS) having a significant role in the



The U.S. Air Force's proposed Caretaker Option will preserve some features of the historic Wake Island Airfield, demolish and decommission others, and involve construction of a new generator facility.

consultations and outcome because of the site's NHL status. The National Trust for Historic Preservation has been notified. Unlike many U.S. possessions, no State Historic Preservation Officer is assigned responsibility for Wake Island.

Wake Island has an extraordinarily significant place in WW II history. It was the scene of the first determined defense of American soil against the aggression launched by the Japanese Empire on December 7, 1941 at Pearl Harbor, Hawaii. On the same day, Japanese bombers



Boat ramp on Peale Island

based in the Marshall Islands attacked the detachment at Wake Island, killing many American servicemen and construction workers who were developing a military base there. After the initial air attack, a Pan Am flying boat, which had been docked during the attack and suffered superficial strafing damage, evacuated trans-Pacific passengers from Wake Island after flying a reconnaissance mission in support of the American defenders. Marine aviators and artillery, assisted by civilian construction workers, subsequently sank several Japanese ships and downed a number of airplanes in the days following the initial air raid against Wake Island, as successive waves of Japanese attacks materialized. The initial repulse of the Japanese provided the first defense of American possessions in WW II and bolstered spirits after Pearl Harbor. Following a determined but doomed defense, the American survivors surrendered to vastly superior Japanese forces. Thereafter American forces frequently attacked Wake Island, causing the Japanese to create underground facilities. The U.S. regained control of the atoll in 1945.

Wake Island also was very important in the development of trans-Pacific flights. Pan Am had started developing facilities there in 1935, and with the threat of war with Japan, military facilities were developed starting in 1941. Following the war, Wake was an important

airfield in trans-Pacific travel. It was here in October 1950 that President Harry Truman and General of the Army Douglas MacArthur met regarding the Korean War, the only time the two met face-to-face. The Coast Guard also established radar facilities on the island, and at the height of its post-WW II use, Wake had a population of nearly 2,000. In the 1970s the atoll was used briefly as a transit point and interim camp for Vietnamese refugees. In 1985 Wake was designated an NHL in recognition of its significance regarding WW II in the Pacific and the trans-Pacific air service prior to the war.

WASHINGTON

Project: Closed Case: Fort Lawton Housing Privatization Programmatic Agreement

Agencies: U.S. Navy

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An amendment to a 2004 Programmatic Agreement (PA) regarding conveyance of historic structures and sites at Fort Lawton, a National Historic District, from Navy ownership in the Magnolia neighborhood of Seattle was executed in early April 2007. The Navy heard considerable community interest and concern regarding the impact of conveying property out of federal stewardship, especially as it related to Discovery Park, a 534-acre natural area park that is itself a former part of Fort Lawton. Early concerns were duly noted, as the 2004 PA expressly required additional consultation prior to conveyance of the historic properties at Fort Lawton. A protective covenant was created for the conveyed properties for either the Washington State Historic Preservation Officer or the city of Seattle's Landmarks Preservation Board to administer by mutual agreement.

In 2004, the Navy executed a Programmatic Agreement (PA) for privatization of family housing in Navy Region, Northwest. It required the Navy to initiate consultation and develop either a new agreement document or an amendment to the existing 2004 PA to address long-term preservation concerns prior to divesting any of the historic properties in or around Fort Lawton. The 2004 PA stated consultation was required to ensure aspects of the cultural landscape are considered in the divestiture planning and decision process. The Navy needed to develop an amendment before divesting those historic properties.

Twelve buildings within the parcels to be transferred are contributing elements to the Fort Lawton Historic District, which is listed on the National Register of Historic Places. Additionally, there are six buildings determined to be eligible for listing on the National Register as contributing elements to the historic district.



902 Montana Circle, built circa 1930
(photo: Upchurch Architects, Inc. & SLA Studio Land)

The Advisory Council on Historic Preservation (ACHP) became involved in the consultations in July 2006. Consulting parties included the Navy, Washington State Historic Preservation Officer (SHPO), city of Seattle, American Eagle Communities, LLC, Pacific Northwest Communities, LLC, and Friends of Discovery Park. Additionally, the Muckleshoot Tribe was consulted and expressed no concerns with the amendment.

The Army created Fort Lawton in the Magnolia neighborhood of Seattle as a military installation in 1900 to protect Puget Sound from naval attack. The installation saw a great deal of activity during both World Wars. The historic district is significant due to its military history.

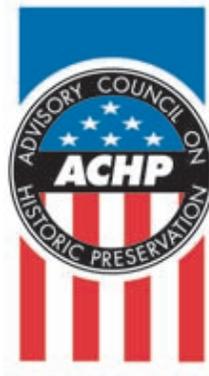
The 2004 PA notes that Discovery Park, a 534-acre natural area park, formerly part of Fort Lawton, operated by Seattle Parks and Recreation and designated in 1973, is part of the vernacular landscape that has evolved through use by the community. Discovery Park documents the shared aspirations, ingenuity, memories, and culture of the community, and preservation of the park setting is also in the public interest, according to the PA.

The housing areas to be transferred at Fort Lawton, all of which are included within the historic district, are the housing on Washington Avenue, which dates approximately to the turn of the 20th century, and the housing on Montana Circle from the 1930s.

For the current amendment to the PA, the Navy developed a Historic Preservation Covenant which will be inserted into the quitclaim deed(s) used to transfer Fort Lawton to the private sector. The covenant stays with the land in perpetuity. Generally, the covenant requires prior SHPO approval for any construction, alteration, remodeling, demolition, ground disturbance, or other activity that might affect the integrity, appearance, or historic value of the historic properties. Such review requests shall be approved when they meet the “Secretary of the Interior’s Standards for Rehabilitation and Guidelines for Rehabilitating Historic Buildings.” The SHPO’s review authority may be delegated to the city of Seattle’s Landmarks Preservation Board. Prior to transferring the property, the Navy shall document interior and exterior conditions of historic properties at Fort Lawton in accordance with the terms of the 2004 PA. This documentation shall be incorporated into the quitclaim deed(s).

For more information:

www.seattle.gov/neighborhoods/preservation/fortlawton.htm
www.cnrw.navy.mil/PAO/Ft_Lawton/Fort_Lawton_Amendment_1_to_PPV_PA.doc
www.seattle.gov/parks/history/military.htm
www.seattle.gov/parks/Environment/discovparkindex.htm#about



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