ADVISORY COUNCIL ON HISTORIC PRESERVATION

CASE DIGEST

WINTER 2007

PROTECTING HISTORIC PROPERTIES: SECTION 106 IN ACTION

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.

John L. Nau, III, of Houston, Texas, is chairman of the 20-member council, which is served by a professional staff with offices in Washington, D.C. For more information about the ACHP, contact:

Advisory Council on Historic Preservation
1100 Pennsylvania Avenue NW, Suite 803
Washington, DC 20004
Phone: 202-606-8503
Web site: www.achp.gov

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

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Cover: *More than 3,000 historic and prehistoric sites are known to exist upon the 224,000 acres of land affected by the Federal Columbia River Power System in the Pacific Northwest.*

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 resolved at the state or tribal level, without the ACHP's involvement.

A considerable number of cases, however, present issues or challenges that warrant the ACHP's attention. The criteria for ACHP involvement in reviewing Section 106 cases are set forth in Appendix A of the ACHP's regulations. In accordance with those criteria, the ACHP is likely to enter the Section 106 process when an undertaking:

- has substantial impacts on important historic properties;
- presents important questions of policy or interpretation;
- has the potential for presenting procedural problems; and/or
- presents issues of concern to Indian tribes or Native Hawaiian organizations.

This report presents a representative cross-section of undertakings that illustrate the variety and complexity of federal activities in which the ACHP is currently involved.

It illustrates the ways the federal government influences what happens to historic properties in communities throughout the nation and highlights the importance of informed citizens to be alert to potential conflicts between federal actions and historic preservation goals, and the necessity of public participation to achieve the best possible preservation solution.

In addition to this report, at www.achp.gov/casedigest.html, the ACHP's Web site contains a useful library of information about the ACHP, Section 106 review, and the national historic preservation program.

ILLINOIS

Project: New Case: Destruction or Adapative Reuse of Two Modernist Structures at Naval Installation Great Lakes
Agency: U.S. Navy, Department of Defense
Contact: Kelly Yasaitis Fanizzo kfanizzo@achp.gov

Two significant Modernist buildings located on the Navy's largest training base are in excess of installation needs. Originally proposed for demolition, both buildings are considered eligible for listing on the National Register of Historic Places, although neither is now listed. As a result of the Section 106 consultation process, the Navy is researching potential adaptive reuse options that could save these structures.

Two excess buildings at Naval Installation Great Lakes, Illinois, are good examples of the Modernist style of architecture and design. The Navy and a number of interested parties are taking a cooperative approach to researching and pursuing adaptive reuse options for these buildings, but their ultimate survival remains uncertain at this point.

The Hostess House, Building 42, was designed by Gordon Bunshaft of Skidmore, Owings & Merrill. It was constructed in 1942 and served as a hospitality building for recruit and sailor recreation and family visits. Bunshaft received the 1988 Pritzker Prize, one of the top awards given to an architect. The building is a significant example of the Modernist style of architecture.

The Great Lakes Naval Museum Association is investigating the possibility of using the Hostess House for its new location. The museum presented the idea to its board in October, and the board voted unanimously to move forward with plans for renovation and occupation.

The Gunners' Mates School, Building 521, was also designed by Skidmore, Owings & Merrill in the Modernist style. It was built in 1952–1954 and served as a training facility for a variety of weapons through the use of simulators. At the time of its construction, the building was the largest steel and glass curtain wall structure in the world (a curtain wall is a non-load-bearing wall attached to the building's framework).

While other portions of the structure have been altered since original construction, this view of the Hostess House, Building 42, at Naval Installation Great Lakes shows the significant Modernist features dating to 1942.

Currently, the Navy is investigating the potential rehabilitation of the Gunners' Mates School for use as the new base galley and club and will compare the cost of rehabilitating this structure with the cost of building a new galley and club.

Potentially, if the adaptive reuse pursuits fail, a Memorandum of Agreement may be developed for one or both of the buildings to be demolished. There are no definite terms for this, as options are still being explored.

Among the groups actively involved in consultation are the Illinois State Historic Preservation Office, the National Trust for Historic Preservation, the Miles van der Rohe Society, International Working Party for Documentation and Conservation of Buildings, Sites and Neighborhoods of the Modern Movement (DOCOMOMO), and the City of Highland Park.

Skidmore, Owings & Merrill provided valuable design

ILLINOIS

The Gunners' Mates School, Building 521, at Naval Installation Great Lakes.

and planning assistance during negotiations over the Gunners' Mates School. John Vinci of Vinci/Hamp Architects Inc. provided valuable planning assistance during the negotiations over the Hostess House.

The Advisory Council on Historic Preservation became involved in consultations in April 2006.

For further information:

www.docomomo-us.org/about/two_s_o_m_buildings_in_the_
balance_the_hostess_house_and_the_gunner_s_mates_school_at_great_lakes_naval_station
www.nsgreatlakes.navy.mil/
mies.iit.edu/news/

LOUISIANA

Project: Ongoing Case: New Orleans FEMA Funding for Privately Owned Building Demolition Secondary Programmatic Agreement
Agency: Federal Emergency Management Agency, Department of Homeland Security
Contact: Jeff Durbin jdurbin@achp.gov

FEMA's extensive involvement in actions on private property on the Gulf Coast is as unprecedented as the damage caused by Hurricanes Katrina and Rita. The two hurricanes in some cases completely demolished buildings, and in those cases, debris removal was left as the essential FEMA action. Two Programmatic Agreements (PAs) are in place for the region regarding FEMA recovery activities.

Hurricane Katrina created an unprecedented contemporary natural disaster affecting heritage resources and an entire existing regional culture when it passed over New Orleans, Louisiana; Mississippi; and parts of other states in August 2005. Hurricane Rita added further devastation to parts of the storm-ravaged area less than three weeks later.

As reported in the spring 2006 *ACHP Case Digest*, the Federal Emergency Management Agency (FEMA) developed a secondary PA regarding the use of public assistance funds for demolition of damaged privately owned residential buildings within Orleans Parish in Louisiana. While an existing statewide PA has helped guide recovery efforts in Louisiana, the unprecedented nature of the situation requires much attention. FEMA worked on the development of the secondary PA to address disaster recovery activities or programs that could benefit from streamlined approaches not specifically included in the statewide PA.

The secondary PA provides for the following:

- a definition of "collapsed buildings," which both the State Historic Preservation Officer (SHPO) and FEMA regard as being exempt from further Section 106 review;

In some instances, debris removal from buildings demolished by Hurricane Katrina was the essential FEMA action governed by the two Programmatic Agreements now in effect.

- a streamlined SHPO review process for determinations of National Register eligibility and assessments of effects;
- a thorough process for public participation in the review of the proposed demolition work;
- a process for FEMA's consultation with historic preservation organizations including the National Trust for Historic Preservation, the New Orleans Preservation Resource Center, the City of New Orleans Historic District Landmarks Commission (HDLC), and Louisiana Landmarks Society;
- a process for FEMA's consultation with Indian tribes about proposed demolition work;
- an archaeological protocol for minimizing ground-disturbing activities during demolition work; and
- a range of treatment measures to mitigate adverse effects, including recordation, architectural salvage, expanding boundaries of existing districts and identifying new historic districts, re-surveys of existing historic districts, geo-referencing of historic maps in a GIS database, and the digitization of HDLC's survey records.

In addition to FEMA, the U.S. Army Corps of Engineers is a federal entity involved in the consultations. The ACHP signed FEMA's Secondary Programmatic Agreement on May 31, 2006. Other consulting parties who have signed the secondary PA include the Chitimacha Tribe of Louisiana, Jena Band of Choctaw Indians, Mississippi Band

LOUISIANA

of Choctaw Indians, Tunica-Biloxi Tribe of Louisiana, National Trust for Historic Preservation, New Orleans Preservation Resource Center, the HDLC, and the Louisiana Landmarks Society. Since the agreement's ratification, the streamlined review process for historic property identification and effect determinations has been implemented. Both Louisiana SHPO staff and FEMA historic preservation staff have indicated the secondary PA is greatly assisting them in the timely completion of their reviews of the city's proposed demolitions.

Consultation on a similar secondary PA for FEMA debris removal and demolition activities in Mississippi continues.

www.achp.gov/docs/fema_PA2.pdf

NATIONWIDE

Project: Ongoing Case: Nationwide Programmatic Agreement for Section 106 Cell Tower Reviews
Agency: Federal Communications Commission
Contact: Charlene Vaughn cvaughn@achp.gov, Katry Harris kharris@achp.gov

A landmark ruling by the United States Court of Appeals for the District of Columbia Circuit on September 26, 2006, affirmed the Advisory Council on Historic Preservation's position that the Federal Communications Commission's approval of cell tower construction subjects the towers to Section 106 review under provisions of the National Historic Preservation Act of 1966.

Disguised as a tree, the stealth monopole construction is intended to minimize adverse visual effects.

On January 4, 2005, the Federal Communications Commission (FCC) issued the Nationwide Programmatic Agreement (NPA) order, which put into force procedures to implement Section 106 tailored to the typical undertakings of the FCC. The most common undertaking related to this NPA is the licensing of wireless communications towers.

The procedures stipulated in the NPA were developed by a working group including the FCC, the Advisory Council on Historic Preservation (ACHP), representatives of the wireless communications industry (including CTIA-The Wireless Association), and individuals and organizations from the historic preservation community. The NPA was made available for public comment through publication in the *Federal Register*. The NPA was ultimately signed by the FCC, the National Conference of State Historic Preservation Officers (NCSHPO), and the ACHP, and was implemented through FCC regulations.

CTIA-The Wireless Association, which is one of the wireless industry trade associations, filed a petition with the United States Court of Appeals for the District of Columbia Circuit for review of two aspects of the NPA order. The first aspect was FCC's conclusion that construction of a wireless communications tower constitutes an "undertaking" subject to Section 106 of the National Historic Preservation Act. The second aspect was the FCC's deference to the ACHP's interpretation of the term "eligible for inclusion" as including properties formally determined eligible for listing on the National Register of Historic Places, as well as properties that meet the criteria for listing but have not received a formal determination.

On September 26, 2006, the DC Circuit Court decided the NPA order was neither arbitrary nor capricious in determining that the FCC's registration process and approval authority make cell tower construction an "undertaking" within the meaning of Section 106. In addition, the court found the ACHP's interpretation of "eligible" was not unreasonable "merely because it was not limited, as CTIA would prefer, to properties formally designated as eligible." Further, the court stated that FCC did not act contrary to law in following the ACHP's reasonable interpretation of a statute it is charged with implementing.

As a result of the court's decision, the use of the NPA was affirmed and its procedures will continue to be used by FCC, its applicants, and SHPOs.

NATIONWIDE

All participants are continuing to learn and apply the stipulations of the NPA, which are tailored to accommodate telecommunications undertakings. The annual review with the signatories to the NPA took place December 12, 2006 and addressed what level of training and guidance is needed to assist stakeholders in implementing the NPA more effectively. The ACHP looks forward to continuing consultation with the signatories and participants regarding the application of the NPA.

NORTHWEST U.S.

Project: Ongoing Case: Columbia River Power System Proposed Programmatic Agreement
Agency: U.S. Army Corps of Engineers, Bureau of Reclamation, Bonneville Power Administration
Contact: Tom McCulloch tmcculloch@achp.gov

Three federal agencies manage a total of 14 dams and reservoirs on the Columbia River and its tributaries in the northwest states of Washington, Oregon, Idaho, and Montana, and market and distribute electric power generated at the dams. The Federal Columbia River Power System (FCRPS) encompasses 2,327 miles of river and reservoir shoreline. More than 3,000 known historic properties, including prehistoric and historic period archaeological sites and properties of traditional cultural significance, lie on the 224,000 acres of FCRPS-affected lands. A revised draft of a Programmatic Agreement (PA) for management of dams and reservoirs on the Columbia River and its tributaries in the northwest U.S. has been distributed for consideration.

The Corps of Engineers, Bureau of Reclamation, Bonneville Power Administration, and the Advisory Council on Historic Preservation (ACHP) believe that a PA setting forth how these agencies will meet their Section 106 responsibilities is desirable, given the number of consulting parties involved, which include federal agencies, states, and tribes, and the many kinds of historic properties involved (prehistoric and historic archaeological sites, traditional cultural properties, architectural resources). While several of the dams have individual PAs setting forth how historic properties will be managed, and several others have historic property management plans, there is no overarching agreement document that provides for consistency and a uniform approach for these interrelated facilities.

Authorized activities at FCRPS-related facilities include electricity generation, navigation, flood control, water for irrigation and municipal and industrial uses, sports and recreation, and fish, wildlife, and natural resource management. All of these activities have the potential to adversely affect a broad range of historic properties that include prehistoric and historic period archaeological sites and properties of traditional cultural significance.

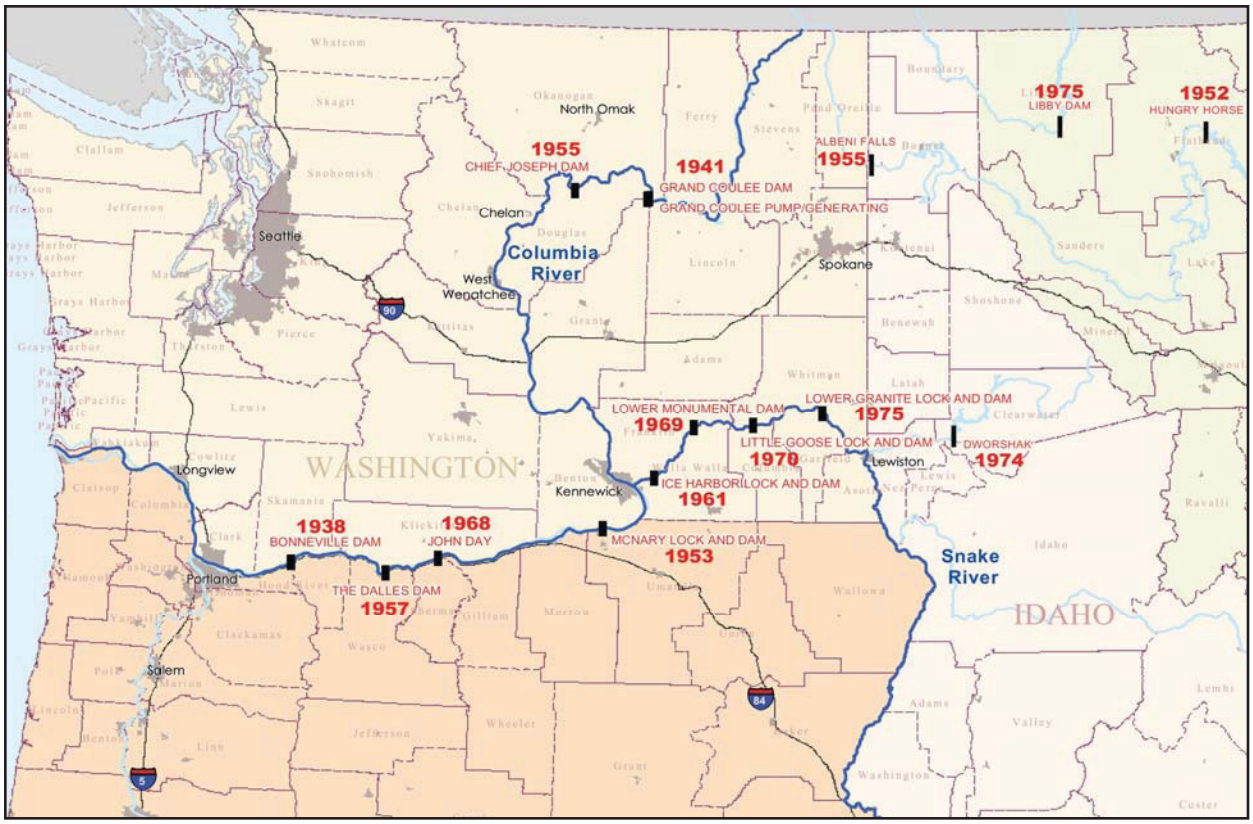
More than 3,000 historic and prehistoric sites are known to exist upon the 224,000 acres of land affected by the Federal Columbia River Power System in the Pacific Northwest.

This project illustrates the complexity of some federal undertakings that present unique coordination challenges to the ACHP.

The ACHP is encouraging all of the federal agencies to view the power system comprehensively and develop an effective, integrated cultural resource management program based on partnerships with tribes, State Historic Preservation Officers (SHPOs), Tribal Historic Preservation Officers (THPOs), and other interested parties. Among other benefits, such a holistic approach would produce more efficient use of limited resources for more useful outcomes, more opportunities to consult with tribes and others, and more relevant information about the nature, value, and distribution of historic and cultural resources.

For several years the federal agencies have been consulting with the ACHP, the SHPOs of Washington, Oregon, Idaho, and Montana, the THPOs of the Confederated Tribes of the Colville Indian Reservation, the Nez Perce Tribe, and the Spokane Tribe of Indians, and representatives of numerous other federally recognized tribes on how best to manage the effects of the FCRPS operations on historic properties in the four states.

NORTHWEST: IDAHO, MONTANA, OREGON, AND WASHINGTON



Fourteen dams in the Pacific Northwest managed by three federal agencies are included in the Federal Columbia River Power System.

Based on comments received from states and tribes on an earlier draft, a second draft has been provided to the four SHPOs, three THPOs, and the following federally recognized tribes: the Coeur d'Alene Tribe, the Confederated Salish and Kootenai Tribes of the Flathead Nation, the Confederated Tribes of the Umatilla Indian Reservation, the Confederated Tribes of the Warm Springs Reservation of Oregon, the Confederated Tribes and Bands of the Yakama Nation, the Kalispel Tribe, and the Kootenai Tribe. In addition, the National Park Service, the Bureau of Indian Affairs, and the U.S. Forest Service have an interest in the proposed PA and may review and comment on it.

The Confederated Tribes of the Colville Indian Reservation, the Nez Perce Tribe, and the Spokane Tribe all have reservation lands within the FCRPS project area; the remaining tribes have ceded lands within the project area.

A comprehensive approach would also provide increased opportunities for coordinated heritage tourism and other economic benefits for the public and local businesses, and a management strategy that private power-generating facilities in the river corridor can use as models as they pursue federal licensing permits.

VIRGINIA

Project: New Case: Norfolk Courthouse Annex Construction
Agency: General Services Administration, Department of Justice
Contact: Hector Abreu Cintron habreu@achp.gov

A 177,000 square foot annex to the historic Walter E. Hoffman Courthouse in Norfolk is necessary to allow the structure to continue serving its core purpose while meeting current and future space needs. The Department of Justice wants to preserve and continue using the historic structure. Six alternatives were considered, and the preferred solution is to construct an annex atop the existing structure in a manner both preserving the historic character of the original while creating a complementary new structure to serve expanded needs. While challenging, the outcome offers the possibility of creating an innovative model for construction of necessary expansion space to a historic structure in a constricted historic district.

A controversial solution to a complicated situation for a 177,000 square foot annex to the historic Walter E. Hoffman Courthouse in Norfolk, VA, would place the new construction atop the existing structure.

The General Services Administration (GSA) proposes to construct an annex to the Walter E. Hoffman Courthouse (built 1932-1934) in Norfolk, Virginia, which is listed on the National Register of Historic Places, and which is located within and contributes to a National Historic District.

The courthouse is a prominent structure in Norfolk. Judges who work in the building desired to remain within the historic structure and led the effort to construct an annex. The challenging issue has been where to locate the annex within the constrained urban location of the courthouse. Construction upon any contiguous lot was strongly controversial and posed difficulties. Even the preferred solution, to build the annex atop the existing structure, was a contentious decision although this alternative was determined to be the best realistic outcome available.

GSA identified six alternatives for the new annex (no action, North Annex, South Annex, East Annex, West Annex, and on top of the existing building). Each of the alternatives has a unique impact scenario to the district or the building itself. One particular alternative (Southern Annex Alternative) faced huge public outcry due to the possibility of GSA acquiring and demolishing a residential historic building, which was recently sold as condominium units after utilizing rehabilitation tax credits. After much discussion and investigation it was determined that the preferred alternative should be the tower construction on top of the existing courthouse. This decision was made in coordination with public information, meetings, and outreach—which found the "stacking" option was the best alternative. This remains a controversial concept, however, posing possibly unique esthetic and structural challenges.

The Advisory Council on Historic Preservation (ACHP) became involved in consultations on May 8, 2006 due to the unique features of the issue. The ACHP and the Virginia State Historic Preservation Officer will work with GSA and the Department of Justice on a

VIRGINIA

Memorandum of Agreement (MOA) when design considerations protecting the historic resource are fulfilled. The MOA will assure the annex is compatible in design with the existing courthouse.

This unique case will require careful planning and coordination with the consulting parties to assure sympathetic new construction. Mitigation has not been fully discussed at this point.

WISCONSIN

Project: New Case: Madeline Island Storm Sewer System
Agency: U.S. Army Corps of Engineers
Contact: John Eddins jeddins@achp.gov

The Detroit District of the U.S. Army Corps of Engineers is managing reimbursement funds for a storm sewer improvement project in La Pointe. The project will involve mostly developed land, but it has the potential to affect unknown archaeological or historic sites on lands known to have ongoing traditional cultural significance to Native Americans who have long resided on and around the island.

The La Pointe storm sewer project impacts mostly developed land and aims to improve runoff and drainage in areas including this street adjacent to the Madeline Island Historical Museum.

The U.S. Army Corps of Engineers (Corps) is managing reimbursement funds for a storm sewer improvement project in La Pointe on Madeline Island, Wisconsin. The funding is part of a pilot program, the Northern Wisconsin Environmental Infrastructure and Resource Protection Development Program (Section 154 Program), intended to provide environmental assistance to non-federal interests in northern Wisconsin. Section 154 relates to Division B of Appendix D, Consolidated Appropriations Act, 2001, Public Law 106-554, as amended. The proposed project at La Pointe will consist of constructing storm sewer piping, manholes, inlets, and pollution control devices, and the surfacing of roads and walkways to improve drainage and remove sediment and pollution from run-off into Lake Superior.

Although shipwrecks, cabins, and archaeological sites listed on the National Register of Historic Places exist on or near Madeline Island, none is in the area of the proposed project. The island itself is not individually listed on the National Register.

Madeline Island, the most southerly and largest of the Apostle Islands in Lake Superior within the state of Wisconsin, is not included within the Apostle Islands National Lakeshore administered by the National Park Service. It is the only one of the Apostle Islands that is now developed and settled. It contains the town of La Pointe, Big Bay State Park, and a 650-acre enclave of the Bad River Indian Reservation.

Madeline Island is considered an important traditional cultural landscape for Native American tribal groups in the region. The island is part of origin and migration stories for the Ojibwe, Ottawa, and Potawatomi Nations. It represents the center of the Three Fires Confederacy. The island is the site of numerous homesteads and burial grounds and is an ongoing place of renewal for tribal members. It encompasses ceremonial grounds still in use today.

It is also an important tourism destination and vacation spot for thousands of people annually. Although the year-round population of the island numbers fewer than 300 people, it enjoys a significant tourism industry. The island is reached only by boat.

The storm sewer improvement project will be carried out for the most part in areas that have been developed to some degree, with roads, sidewalks, or parking lots. However, there is the potential for uncovering intact archaeological remains and burials below the level of disturbance from previous development. In addition, there may be features or localities of the larger

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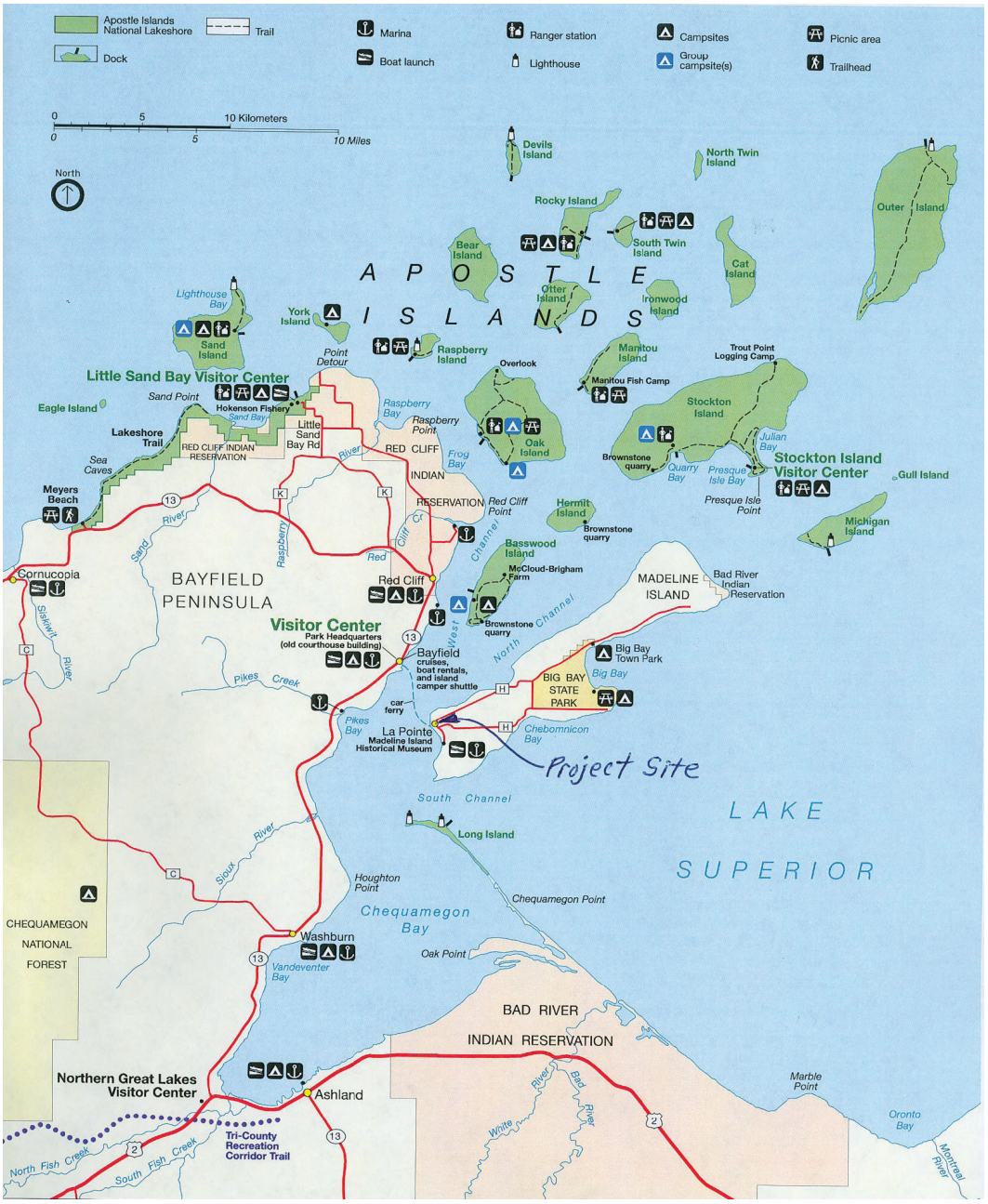
The La Pointe storm sewer project is located on Madeline Island, the largest of the Apostle Islands and the only one not included in the Apostle Islands National Lakeshore. The island is also a traditional cultural area for Native Americans.



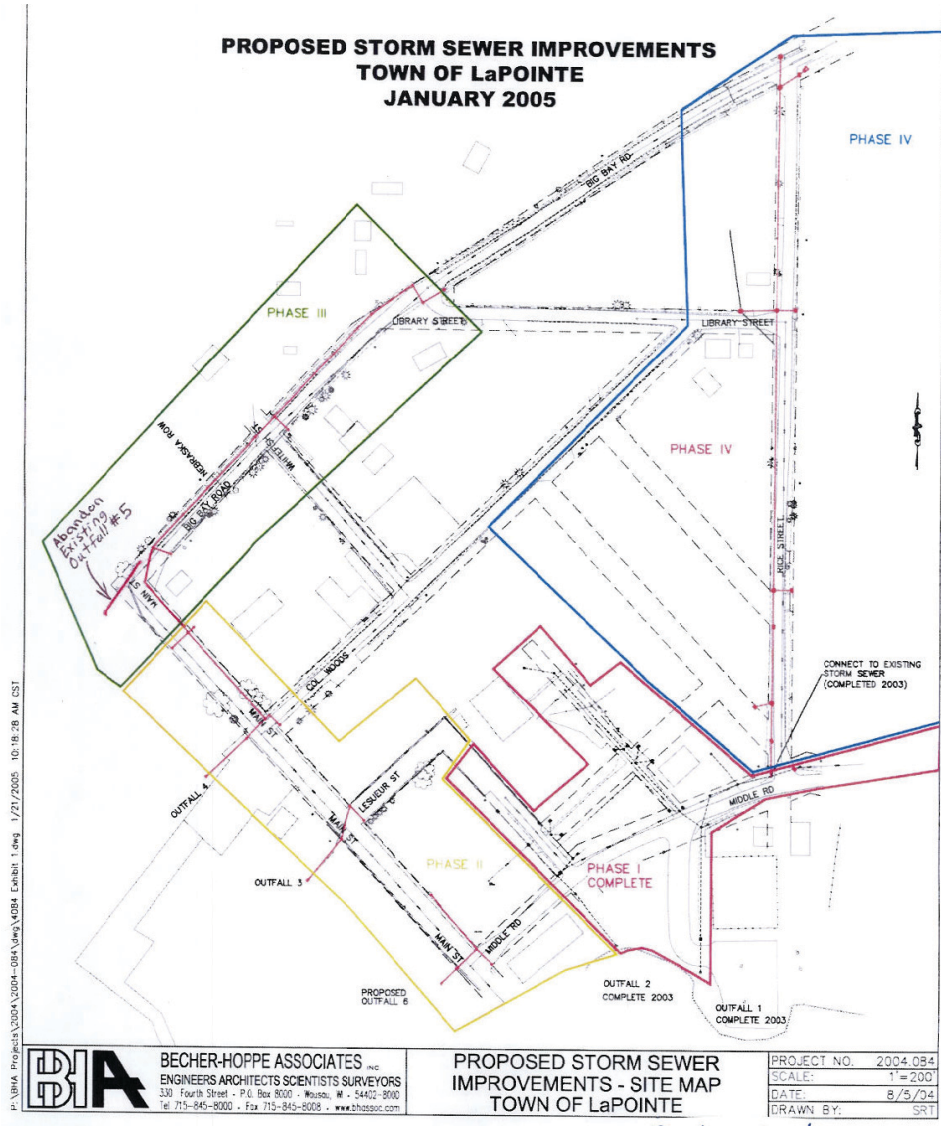
traditional cultural landscape within the undertaking's area of direct impact.

The Section 106 process for this undertaking has been complicated because the island as a whole is a geographic space that is of traditional religious and cultural importance to multiple tribal groups. However, most of the island is owned by non-tribal entities. Written documentation about the religious and cultural significance of the island is limited. The history and knowledge regarding the significance of the island is

WISCONSIN

primarily shared through oral traditions of the Ojibwe, Ottawa, and Potawatomi Nations.

The ACHP has been working with the Corps, Wisconsin State Historic Preservation Officer, tribal, and other consulting parties to resolve differences and foster consensus on methods to resolve adverse impacts to the traditional cultural property. A Memorandum of Agreement (MOA) is being developed that will include stipulations that members of the Corps and La Pointe officials will conduct oral interviews with tribal elders of consulting tribal groups to collect general information about Madeline Island as a traditional cultural landscape and information about any specific features or locations (including graves) within the direct impact area for the funded project. The MOA will also include protocols for monitoring during construction excavation to deal with archaeological deposits and graves that might be encountered below existing streets, sidewalks, and parking lots.



As this site map indicates, the small area of Madeline Island affected by proposed storm sewer improvements has already been developed.

Preserving America's Heritage

ADVISORY COUNCIL ON HISTORIC PRESERVATION
1100 Pennsylvania Avenue NW, Suite 803 · Washington, DC 20004
Phone: 202-606-8503 · Fax: 202-606-8647 · achp@achp.gov · www.achp.gov