Preserving America's Heritage

ADVISORY COUNCIL ON HISTORIC PRESERVATION
SPRING BUSINESS MEETING

TAMPA, FLORIDA
MARCH 23-24, 2016

ADVISORY COUNCIL ON HISTORIC PRESERVATION

401 F Street NW, Suite 308 • Washington, DC 20001-2637
Phone: 202-517-0200 • Fax: 202-517-6381 • achp@achp.gov • www.achp.gov

Preserving America's Heritage

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MEETING
ADVISORY COUNCIL ON HISTORIC PRESERVATION
Ballroom II
Westin Tampa Harbour Island Hotel
Tampa, Florida
March 24, 2016

Note: Briefing papers for agenda items are located at the indicated page numbers

PROVISIONAL AGENDA

Call to Order 10:30 a.m.

I. Chairman's Welcome

II. Historic Preservation Policy and Programs
- A. Building a More Inclusive Preservation Program (page 5)
  - 1. American Latino Heritage Initiative
  - 2. ACHP Youth Initiatives
- B. Preservation50 and the ACHP Public Policy Initiative (page 7)
- C. Policy Statement for Resilient Communities (page 10)
- D. White House Council on Climate Preparedness and Resilience (page 12)
- E. Historic Preservation Legislation in the 114th Congress (page 16)
  - 1. Historic Preservation Fund Reauthorization
  - 2. Historically Black Colleges and Universities Reauthorization
  - 3. African American Civil Rights Network Legislation
  - 4. Preservation Research at Institutions Serving Minorities (PRISM) Act
  - 5. Native American Tourism and Improving Visitor Experience (NATIVE) Act

III. Section 106 Issues
- A. Federal Agency Support for SHPOs and THPOs
- B. Public Involvement in the Section 106 Process (page 30)
- C. Fixing America's Surface Transportation (FAST) Act (page 32)

IV. ACHP Native American Affairs Committee Activities

V. New Business

VI. Adjourn

Preserving America's Heritage

MEETING
ADVISORY COUNCIL ON HISTORIC PRESERVATION
ANNOTATED AGENDA

I. Chairman's Welcome. *The meeting will be called to order at 10:30 9 a.m. Chairman Wayne Donaldson will introduce Mr. Henry of the Seminole Tribe of Florida who will provide a traditional welcome to the members. Seminole Tribe of Florida Chairman James Billie and Chairman Donaldson will then sign the Section 101(d)(5) agreement authorizing the tribe to substitute its preservation review procedures for the general Section 106 regulations.*

II. Historic Preservation Policy and Programs

A. Building a More Inclusive Preservation Program

1. American Latino Heritage Initiative. *Vice Chairman Teresa Leger de Fernandez will lead a discussion following up on the fall listening session in Santa Fe and the previous day's tour and session. Members will be asked to provide direction on actions the ACHP might take to advance the engagement of the American Latino community in the national historic preservation program. No formal action.*

2. ACHP Youth Initiatives. *Communications, Education, and Outreach Committee Chairman Bob Stanton will submit the committee's proposed strategic plan for engaging youth in historic preservation. Native American Affairs Committee Chairman Leonard Forsman will report on the ACHP's tribal youth activities. Formal action on the plan needed.*

B. Preservation 50 and the ACHP Public Policy Initiative. *Preservation Initiatives Committee Chairman Brad White will summarize the member discussion from the previous session and next steps. No formal action.*

C. Policy Statement for Resilient Communities. *Mr. White will present for discussion a proposed policy statement as a follow up to the ACHP's report on rightsizing. Member comment invited, but no formal action needed; final statement will be circulated for adoption by mail vote.*

D. CEQ and White House Council on Climate Preparedness and Resilience. *Mr. White will report on Preservation Initiatives Committee discussions on incorporating historic preservation into Administration initiatives. No formal action.*

E. Historic Preservation Legislation in the 114th Congress. *Mr. White will report on ACHP legislative activity.*

1. Historic Preservation Fund Reauthorization. *Report only.*

2. Historically Black Colleges and Universities Reauthorization. *Members will be asked to support the bill. Formal action needed.*

3. African American Civil Rights Network legislation. *Members will be asked to support the bill. Formal action needed.*

4. Preservation Research at Institutions Serving Minorities (PRISM) Act. *Members will be asked to support the bill. Formal action needed.*

5. Native American Tourism and Improving Visitor Experience (NATIVE) Act. *Members will be asked to support the bill. Formal action needed.*

III. Section 106 Issues

A. Federal Agency Support for SHPOs and THPOs. *Federal Agency Programs Committee Vice Chairman Tom Cassidy will report on steps taken to implement recommendations adopted by the ACHP. No formal action needed.*

B. Public Involvement in the Section 106 Process. *Mr. Cassidy will report on committee discussions on the topic. Member direction will be sought. No formal action needed.*

C. Possible Presidential Memorandum on Cultural Resource Mitigation. *Mr. Cassidy will report on committee discussions on the topic. Member direction will be sought. No formal action needed.*

D. Fixing America's Surface Transportation (FAST) Act. *A report will be provided on the implementation of this act. No formal action needed.*

IV. ACHP Native American Affairs Committee Activities. *Chairman Forsman will report on discussions regarding Section 106 agreements and Indian tribes. No formal action expected.*

V. New Business. *There is no new business at this time.*

VI. Adjourn. *The meeting will adjourn by 1 p.m.*

Preserving America's Heritage

BUILDING A MORE INCLUSIVE PRESERVATION PROGRAM
Office of Communications, Education, and Outreach
Office of Preservation Initiatives

Background. The ACHP has undertaken an initiative to engage diverse audiences in conversations about historic preservation to ensure that the national preservation program recognizes the heritage of all Americans and provides access to its tools and activities for all who care about that heritage. These efforts have spanned a variety of efforts, ranging from participation in conferences and special events to hosting listening sessions that engage citizens and local organizations in discussions about how the national historic preservation program can better support their needs as they seek to preserve their own cultures and heritage. This included a series of meetings with more diverse constituencies, including listening sessions in Boston, Massachusetts, and San Francisco, California, to hear directly from the Asian American and Pacific Islander (AAPI) community in 2015.

At the March 2015 ACHP business meeting, ACHP members agreed to move forward to engage the Latino and Hispanic community in a manner similar to the AAPI initiative.Vice Chairman Teresa Leger de Fernandez proposed hosting two listening sessions to hear directly from the Latino and Hispanic constituency. The goal was to determine how the ACHP can work to support the Latino and Hispanic community in historic preservation.

In October 2015, the ACHP hosted a listening session on Latino and Hispanic heritage in Santa Fe, New Mexico, to hear from representatives about their experiences with historic preservation in their communities. At the ACHP's March 23-24 meeting, members will participate in a similar dialogue in Tampa, Florida, following a tour of the area.

Next Steps. As a part of the March 2016 meeting, ACHP members will visit West Tampa and Ybor City to experience the Latino and Hispanic heritage that enriches this area. Ybor City in the 1880s was a melting pot of immigrants and its vibrant character (evident on the 7th Avenue Commercial Strip) is a well-defined blend of cultures from many countries, including Cuba, Spain, Puerto Rico, Germany, and Italy. The Ybor City Historic District is a National Historic Landmark with almost 1,000 historic structures built during its peak years as the center of the domestic cigar industry. Most early Ybor City residents made their living from cigar making. Ybor City remained the "Cigar Capitol of the World" until the 1930s.

On March 23, ACHP members will participate in a tour of West Tampa and Ybor City, which will set the stage for a discussion late in the afternoon. A luncheon briefing is scheduled to begin at noon at the Tampa Bay History Center, where members will be introduced to the history of the area. At 1 p.m., members will depart on a bus and walking tour.

During the tour, members will have the opportunity to interact with community members and participants from local organizations. Members will observe first-hand what is being done to preserve and share the cultural traditions and heritage of the Latino and Hispanic community. Additionally, members will be

able to ask participants about community experiences with historic preservation and local planning involving historic resources and whether that experience has been positive or negative.

Following the tour, ACHP members will have a discussion with local representatives followed by an informal reception. The discussion will focus on how the ACHP should engage with Latino and Hispanic communities about historic preservation.

During the March 24 business meeting, members will have a brief discussion about charting the course to move forward, including direction to the staff regarding appropriate recommendations to bring to the July 2016 business meeting. Members should consider what was heard during the Tampa tour, while taking into account the report from Santa Fe, as well as previous dialogues with the AAPI community in San Francisco and Boston.

At the business meeting discussion, members should consider the following questions:

- What might be some effective strategies that could support preservation in the various communities?
- Are there some approaches that are applicable to all communities and are there others that might be specific to particular communities based on their ethnic heritage and population?
- What specifically can the ACHP do or recommend to others as a result of these conversations that would advance its overall goal of building a more inclusive preservation program?

After the March meeting, the staff will prepare a series of recommendations for ACHP action and share them with the membership. At the July 2016 business meeting, ACHP members will have the opportunity to adopt final recommendations to further the goal of engaging all Americans in the historic preservation program.

Action Needed. Members will have the opportunity to offer their thoughts on the areas that might be addressed in the ACHP's final recommendations and suggest specific actions that warrant consideration. No formal action is needed.

Attachments: Report of ACHP Listening Session, Latino/Hispanic Heritage, Santa Fe, NM, October 2015
Recommended Actions to Support Asian American and Pacific Islander Efforts in Historic Preservation

March 9, 2016

Preserving America's Heritage

Draft

ACHP *CONTANDO CUENTOS* (LISTENING SESSION) & TOUR, HISTORIC PRESERVATION AND LATINO/HISPANIC HERITAGE
October 14-15, 2015
Santa Fe, New Mexico

Background. As part of its initiative on building a more inclusive national preservation program, the ACHP hosted a listening session and tour in Santa Fe, New Mexico, to learn about Latino/Hispanic heritage. The ACHP sought the views of experts on Latino and Hispanic cultural heritage, including activists, scholars, community leaders, and representatives of non-governmental organizations, and visited a variety of sites that embodied that heritage.

Over the last several years, the ACHP has undertaken a number of activities aimed at promoting cultural diversity in the historic preservation field and broadening public views of the nation's heritage. These efforts began with a forum at Ellis Island in August 2012. The forum led to the adoption of recommendations for further action, which included the following:

- *Identify various groups that represent diverse constituencies and begin a series of meetings with them, using occasions where the ACHP, its members or staff are present in a locality or when a group is in Washington, D.C.*

Since then, the ACHP has participated in a number of conferences, workshops, and events focused on greater inclusiveness and African American, Native American, Asian American and Pacific Islander (AAPI), and Latino/Hispanic heritage. The ACHP has also hosted three "listening sessions" to hear directly about the preservation experiences and needs of particular ethnic or cultural groups. The first two such sessions were held with members of the AAPI community in Boston (January 2015) and San Francisco (March 2015).

As with AAPI, the ACHP decided to host two listening sessions with members of the Latino/Hispanic community. Santa Fe was selected as an appropriate western venue, with its Spanish colonial heritage and its historic center surrounded by a long Hispanic rural tradition and settlement. In March 2016, the ACHP will meet for its second session in Tampa, Florida. Tampa contains one of the oldest and largest Cuban American historic districts in the U.S., Ybor City, along with other Latin and Caribbean heritage reflecting the historic Latino American immigrant experience.

Santa Fe Listening Session Goals. The listening session took place on October 14-15, 2015, during Hispanic Heritage Month and had the following goals:

- Hear some of the stories of place and history that should be preserved as part of the national heritage–the *contando cuentos* part of the meeting.
- Hear from community representatives and civic activists about their experience with historic and cultural preservation in their communities;

- Share information and views about the challenges, opportunities, potential benefits, and techniques of preserving history and historic places, cultural practices and traditions, and other aspects of Latino/Hispanic heritage in modern America;
- Discuss how preservation can help to support community vitality, identity, and education; and
- Explore how historic preservation could better serve the needs of communities for building and sustaining community life and community institutions.

As the ACHP noted in its invitation to participants, "Your observations will inform the ACHP on ways that the federal government and the national preservation program might be more responsive to and supportive of historic preservation needs within the larger Latino/Hispanic community. We believe that America's preserved history of place must include the spaces and places inhabited by Latinos, their communities, struggles, and triumphs. We must preserve the places where our stories were lived and the places our communities and culture still hold dear."

Schedule of Events and Session Agenda. The listening session and tour included a session at the Laboratory of Anthropology, Museum of Indian Arts and Culture, part of the New Mexico State Museum. This meeting was preceded by a day-long tour to the historic Hispanic village of Chimayo (National Register district), its religious shrine (NHL), and a drive through the nearby mountain villages of Truchas (film location for *The Milagro Beanfield War)* and Las Trampas (NHL district) with its historic church (NHL). Additional details along with the agenda for the listening session and a list of participants are provided in the Appendix.

Listening Session Issues. The ACHP posed a number of questions to the participants in Santa Fe ahead of time to help frame topics for discussion and elicit participant observations for further dialogue.

--What are your views on challenges and opportunities for preserving Latino and Hispanic cultural traditions and heritage, sharing them with the public, and passing them on to future generations?

--How do you see the relationship among scholarship, cultural appreciation, public education, and the physical preservation of buildings, sites, or objects?

--How would you characterize community experience with historic preservation and local planning involving historic resources? Has it been positive or negative?

--Can you share a success or failure in heritage preservation, and why you think it succeeded or failed?

--Do you have experience with place-based preservation programs, such as local landmark designations or the National Register of Historic Places? What is your view of these programs?

--Are there particular sources of funding or technical assistance that you think are helpful and might be good models for future programs?

--In order of need and priority, how would you rank sharing traditions and heritage with community and neighborhood members; interpreting history and culture to visitors; or educating young people about their legacy?

--Do you think cultural heritage tourism as currently practiced is good, bad, or a mixed result for Latino and Hispanic communities? How do you think it could be of more benefit to localities?

--Do you have any overall observations about preservation needs, potential benefits, community sustainability, or other issues in preserving and interpreting Latino and Hispanic heritage?

The session was recorded on video, and written notes were taken. For this report, the ACHP staff has grouped comments under several themes. Key observations under the topics are indicated by boldface.

Listening Session Summary, Thursday, October 15, 2015

The meeting began with a welcome from ACHP Chairman Wayne Donaldson, and expressions of appreciation to Vice Chairman Teresa Leger de Fernandez and the ACHP's co-hosts, the New Mexico Department of Cultural Affairs, with special thanks to Jeff Pappas, Director of the Historic Preservation Division and State Historic Preservation Officer; Don Usner from Chimayo; and Kak Slick, former New Mexico SHPO and President of the ACHP Alumni Foundation, for their assistance.

Chairman Donaldson outlined the ACHP's efforts to build a more inclusive preservation program and summarized his experience as California SHPO and similar work in California going back to the 1980s. This produced a statewide ethnic historic site survey focused on historic resources associated with American Indians, Black Americans, Chinese Americans, Japanese Americans, and Mexican Americans that was published under the title "Five Views."

Vice Chairman Leger de Fernandez emphasized the value of the listening session as an opportunity to share stories of everyone's experience with these issues. Executive Director John Fowler elaborated on the goals of the ACHP's efforts: to ensure that the work of the NPS to broaden the diversity of historic properties in the NHL and National Register programs is incorporated into federal project review, the policies and practices of federal agencies, historic tax incentives, and other aspects of the national historic preservation program. A key goal is to improve federal programs and practices and make those programs more accessible and helpful to diverse groups while raising awareness of preservation and its potential for helping communities through historic preservation.

Stephanie Toothman outlined some of the NPS' goals and the grassroots' efforts to address them. Former Secretary of the Interior Ken Salazar's request to tell the story completely led to the American Latino Theme Study that was completed and issued in 2013. California SHPO Juli Polanco confirmed the value of this work for statewide theme studies that are being undertaken. Dr. Toothman also noted NPS' Teaching with Historic Places program and the newest World Heritage site, the San Antonio Missions. The local community has been actively engaged in that effort and in preservation of an associated irrigation system, an *acequia*. Estevan Rael-Galvez, formerly of the National Trust for Historic Preservation and a member of the NPS American Latino Scholars Study Panel, recounted that at the dedication Secretary Salazar began to read his script but put it aside and spoke in Spanish, a moving reminder that preserving the language along with the culture is extremely important.

Individuals around the table offered opening comments. Discussion then proceeded over a wide range of subjects, with Vice Chairman Leger de Fernandez serving as moderator.

Key Points in the Discussion

Making Sure All the Stories Are Told

There is a need to give voice to under-represented or marginalized groups, and not only tell those stories but draw from them the themes or lessons that help instruct, inspire, and empower those groups. Story-telling is valuable, especially in educating children, but too often Latino and Hispanic individuals and their contributions to history are missing from those stories. The Latino community from

an early age is accustomed to not being a part of history as taught in schools. The layers and intersections of history should be acknowledged, including translations and other transformations, and the different ways they are used identified. History books are structured around 'heroes' (or leaders) and individuals; this is often inconsistent with the way stories are told in Hispanic culture. As one individual observed, "When I am reading the books, I don't see any brown people." Spanish colonial history may be discussed, but later periods (including civil rights, important for all Americans including Latinos) is not. There needs to be an examination of the Latino place in history within the context of the modern era and current problems and concerns. At the local level, there was often complex interaction among diverse groups (Hispanic and Native Americans, or Latino and Japanese Americans, for example) that is not reflected in official histories at all. Then there are very old places, like Chimayo in New Mexico, which are not known outside of the immediate region.

Historical Recognition and Preservation

Recognition in history may be at least as important as historic preservation, if not more so—for people to see themselves and their forebears in history and to see that others value their place in the national story. Latinos are not entitled, and the unentitled often get lost to history. A community that was hurt historically may not wish to be recognized or memorialized. In the Southwest, the culture, the architecture, and the heritage have been appropriated by others—"it's not ours anymore"—but place identity remains very important [see below]. Preservation is local, but it is important to understand why local issues matter to the national narrative.

Considering Cultural Values

It is important to recognize and embrace the fact that Latino culture responds to and exemplifies its history in ways other than scholarly means. A poem, a song, a dance, or a building may all have equal significance and expression and may be deserving of preservation. An individual commented, "I grew up in Albuquerque. I learned from the stories my grandfather told through music, through picking up the guitar and talking over a long evening." Sometimes a motivation for preservation is nostalgia, but often such memories of the past and cultural heritage are too personal and private. People do not necessarily want to share these thoughts and emotions with the broader public. Cultural identity and personal identity are entwined, but "it requires a mature person to look at the voices coming from those walls" and learn from them. Latino culture also values humility, including circumspection about private knowledge or negative events. To some extent many of these attitudes come from a lack of self-esteem. Building a house used to be the domain of the father and represented his manhood and his ability to support his family; now because of building regulations very few people can build adobe houses. It is everything that is counter to the organic essence of that process. So now most males cannot say "I will go build a house." The culture is reduced to nothing or to commercial production dictated by a regulated process. The question is: How do we recognize, honor, and allow these communities to have their say? We are trying to reconcile our culture with capitalism.

Significance, Integrity, and the National Register, and Traditional Properties

The National Register ought to reevaluate the way in which intangible evidence informs significance, particularly as it relates to an oral based tradition as opposed to written records. Revised National Park Service guidance should deal better with Traditional Cultural Properties. The National Park System Advisory Board's review of criteria and guidance to ensure that all voices are being heard and more underserved communities represented through the National Register and other means will be valuable. Currently the National Register system has too many obstacles and too much emphasis on architecture. Some states are taking inventory data and creating mobile apps, but these cannot account for much detail or the overlay of different layers of history, and the cultural significance does not necessarily

come through. Places do matter; from the SHPO perspective, materials and workmanship are key to identifying the cultures and traditions of New Mexico and that is central in evaluations of historic significance. Where there are changes or loss of integrity, it makes it difficult to make those judgments. Substituting "authenticity" for "integrity" also has problems. Sometimes an important resource is "just a box," but what happened within that box is important. It has little architectural value but may have a lot of cultural value. When the dimension of time and how the structure or place has changed over time is added, it gets even trickier. In some ways, "feeling" and "association" are particularly important aspects of integrity when speaking of traditionally significant places or properties.

Place Identity, Community, and Cultural Landscape

We need to consider living communities, their place in the environment, and how the members of the community have coped. The underlying culture, the intangible heritage, is as important as the buildings and other tangible resources created by the culture. Place identity is very important, and the concept of cultural landscape needs to be emphasized. Until historic and cultural resources are recognized as part of a continuum across the landscape, there will be difficulty understanding them and preserving them. For example, when the Natural Resources Conservation Service provides funding for improving farming techniques, the resulting project may improve water efficiency but result in the loss of the *acequia* system within the landscape. That landscape, so tied to traditional society and community, becomes lifeless. Since the irrigation ditch itself remains, the agency believes there is no impact, and the community is happy to take the money. But something important has been lost. Defining the aspects of the landscape that make it special is what needs to be incorporated into project planning methodology, along with asking "What is this going to do to people on the ground?" There are great public lands in New Mexico, but often they are managed within a regulatory environment that is not very flexible or responsive. How can this be changed? Some programmatic treatments and programmatic agreements may offer useful models for dealing with a region and its various resources across the landscape. For example, an agreement for oil and gas development in the Permian Basin of New Mexico, involving the Bureau of Land Management and the New Mexico SHPO, creates special mitigation funds to help synthesize information and to pursue new research.

Relevance for People, Especially Youth

We need to find ways to connect with and engage young people in these efforts and make heritage and heritage preservation relevant to them and to their interests. It needs to be personal, and there needs to be some sense of self-discovery to make the connection. There also need to be messages about the future that can resonate with young people. There are good examples of using nature, culture, and artistic expression to educate and connect with youth. Examples were given of workshops and field trips involving fourth graders who explored the Rio Grande environment and its value through various disciplines and media. Engaging young people through the schools is also important, especially when it is community-oriented. There needs to be better ways to preserve community knowledge and cultural practices, and have them passed from generation to generation.

Building Partnerships

Local and regional connections and co-partnerships are critical, including work with partners who are not considered preservationists (e.g., humanities, arts, Habitat for Humanity, CORE). The private sector needs to be part of the solution when it comes to preserving cultural heritage. For example, at the Pueblo of Sandia a building needing repairs provided the catalyst for involving many members of the community and organizations, and led to a community revitalization as well as cultural revitalization focus. The project got a lot of people involved and this has changed how they are doing restoration at the pueblo.

The Cornerstones Community Partnership is a useful model—the organization manages about $600,000 of projects, with a focus on restoring and repairing traditional architecture. Most of the money comes through SHPOs, and the process can be challenging for a small non-profit. However, the organization has been working with local communities for the last 30 years. Cornerstones listens to those who value the resources and know how to build with traditional techniques, which helps engage members of the community organically. The goal is getting the community interested, not being an "authority" coming in to take over. Sometimes a project will take 10 years, but the efforts lead to long-term relationships that are based on mutual trust and cooperation.

Reconciling Cultural Values with Modern Preservation, Conservation, and Bureaucracy

Federal agencies may not recognize the heritage value of historic communities like Chimayo, which to outsiders simply looks like a poor rural village, with collapsing structures, an overgrown *placita* (small plaza), and a variety of social problems. Hispanic pueblos are often not recognized and valued as much as Native American pueblos. But a place like Chimayo has a rich heritage, and those voices need to be heard. It is difficult to get recognition or appreciation through a bureaucratic process that does not allow for a "messy story." Chimayo residents seeking historic recognition may have been more motivated by a need to assert identity and defend against outsiders making decisions for their community. Dealing with the Native American community is a similar challenge. Native cultures and religious beliefs offer value to these sites. The same process needs to be undertaken to deal with many cultures, and that sensitivity needs to be integrated into the daily work of federal agencies.

Similarly, traditional communities may not appreciate environmentalists, because they think "you are going to shut us out." The question is: How can Latinos and Hispanics work with environmentalists and help them learn about community values, while shifting the narrative to identify points of consensus? There is a conservation ethic among traditional communities, which is how people survive in such a place, but it is not the same philosophy or language that environmental advocates use. How conservation and preservation is messaged is not simply through translation between Spanish and English. "It's more about this image of having one person on the top of a mountain rather than the image of having a family next to a river." The ways that a traditional community preserves its history may not be the ways advocated by the government or by scholars. The question then becomes how to teach the federal government to respect the way locals conceive of their community and environment? How diverse are these agencies or the SHPO offices? It matters who is at the table. The difference between the intellectual need to preserve Latino history and the challenges of doing hands-on preservation with that community needs to be communicated and supported.

Preservation is often very static and inadequate to really tell the story of a place and of people. Other organizations, such as state humanities councils, could provide support; oral histories are useful as well as other tools. Connections to living communities and their needs are often not fully appreciated. Within communities, the Main Street approach has been very successful. Heritage preservation can be a useful tool for community development. It allows people to use short cuts to get in the door and to have people tell their stories. An individual commented that "We went to communities and said, 'We have this money; what would you like to see?' Now, we are setting up groups for our staff to work with. And we are asking 'What is the value and potential contribution of the different cultural groups?' " Visual artists and poets need to be at the table, to ensure that they are part of these conversations. They breathe new life into these entities and help recover the story of these places, sometimes more so than a historian. In terms of a new interpretive paradigm, the artists move the story in a different way. Part of it is learning how to shift the narrative, and shift the vocabulary. There are very real tensions around the words in use—conservation vs. preservation vs. recognition. From a bureaucratic standpoint, recognition is part of preservation. "Authentic" may not be the right word, given the baggage that it carries. Words matter. The global community is far ahead of the U.S. on issues like this.

Unintended Consequences of Preservation, Including Section 106 Review

Much of modern preservation is imposed from outside, and may not be addressing peoples' real problems or issues. At one community group planning session on heritage preservation, an older person said "I don't need to be preserved, I'm not a fruit." There may also be unexpected financial burdens such as maintenance expectations for historic structures once they have been officially recognized. Historic preservation often has restrictions that do not allow for the "intangible" to be saved. Preservationists might find other ways to memorialize places of significance. Many see preservation to be too complicated and too drawn out, and have too many laws and regulations.

How needed projects proceed without causing problems? There are challenges with Section 106—for example, a simple federal grant to facilitate saving the berms along an *acequia* required Section 106 review. The community wound up spending time and resources on that review rather than the actual work that was needed to fix the irrigation problem. In a second example, a small amount of funding through the Northern Rio Grande National Heritage Area for replastering a *morada* [a Penitente meeting house] required Section 106 review; these structures have been plastered and replastered regularly for hundreds of years through traditional processes. It makes no sense to the community and gives "preservation" a bad name. Hispanic influence has been particularly set back. Communities want to be more involved in making decisions about preservation–what should be preserved and how should it be preserved? Meanwhile, economic forces are at work, and gentrification and razing buildings are erasing history. Many grant offerings are also too specific and targeted—there is no flexibility in how they can be used, and the grant funds come with all kinds of conditions.

Improving Management, Consultation, and the Issue of *Acequias*

Culture has to be woven into every consultation, but there are layers of history, culture, and meaning that need to be considered in management decisions. For example, *acequias* (traditional irrigation ditch systems, maintained by community associations) are cultural assets as well as living resources. *Acequias* were how villages survived in rural areas for centuries. Water in the Southwest is a scarce resource, and its management is important. There is little money, and *acequias* are run by volunteer associations. This can lead to difficulties when portions of *acequias* cross public lands. There are examples of individuals being taken to federal court on trespass charges by the U.S. Forest Service "for doing what they had done forever." The issue had to be resolved at the highest level of the Forest Service, but with changes in personnel or policies it may have to be done all over again. In another location, the *acequia* has only one Hispanic family, which has changed over the years. Yet the institution and social system carries on, and neighbors of varied backgrounds continue to care for the resource as a community responsibility. Information about the *acequia,* its importance, and how it is to be maintained are passed on from generation to generation. In another case, where a culvert under a road needed to be repaired, a federal employee observed that "You are lucky this isn't a historic structure."

Response from Butch Blazer, USDA

Deputy Under Secretary of Agriculture Butch Blazer commented that he was glad to hear about these issues, and encouraged the representatives who have spoken about the *acequia* issue and involvement of the Forest Service (which Mr. Blazer oversees) to follow up with him and with the Regional Forester. Through new policies, including a new planning rule, there should be more consideration of traditional community practices and needs, and better strategies for elevating these discussions within the bureaucracy. The rule provides for forest management plans to identify and institutionalize the interests of affected parties as well as such considerations as the maintenance of *acequias* or care for sacred sites. Obviously a lot effort has gone into fixing the problem with *acequias*, but it needs to be institutionalized. The timing is right.

He said that, as a member of the Mescalero Apache Tribe, he recalled many stories told by elders who are no longer here. Stories of Geronimo and his treatment in prison—that is the kind of history that children and grandchildren need to hear. Mr. Blazer observed that "If you don't get that real history out there, you can't learn, and this needs to be done collectively." He pointed to the success of the Navajo Nation in educating young people on the reservation. He encouraged the ACHP to share the concerns and interest that have been expressed with agencies so they can be considered as the agencies set priorities for their work. He pointed out that it is not that the government does not want to help, but rather that government officials do not fully understand the issues or how to help.

Response from Stephanie Toothman, NPS

Dr. Toothman observed that the NPS is undergoing a major cultural shift. It wants to support partners and is working with park units to ensure they understand that there are multiple layers of stories to tell. NPS is starting to write "foundation statements," a new process to aggressively identify those stories and correcting biased or inaccurate stories. Dealing with wilderness is another major issue. In general, NPS has a lot of work to do. With the new San Antonio Missions World Heritage Site designation, the NPS is working to get information about the missions into the San Antonio schools "because it's not in line with the official story." This is a new era; social media has eroded the common belief that history is written by the victors. She noted pending legislation to formally change National Register criteria to explicitly include cultural landscapes as a historic property type.

Response from Jeff Pappas, NM SHPO

Dr. Pappas noted that there is considerable flexibility built into the NHPA and the National Register process. It can accommodate many of the issues discussed, including capturing the unique history of Latino communities. The process is, however, significantly underutilized because of the narrow way in which it has been applied to the range of historic properties in a state like New Mexico. An example is the recent Albuquerque Railyard National Register district nomination. Originally drafted in 1986 under Criterion C for architecture, the New Mexico SHPO commissioned a new nomination to investigate the complex's social and cultural history under Criterion A so the labor contributions by members of a historically Hispanic community located directly across the street from the Railyard could be incorporated. The National Register process has unfortunately been largely the domain of architecture and architectural historians, and often tied to the federal rehabilitation tax benefits or local design review; this is a conceptual issue that can be adjusted.

Regarding a concern voiced that the state/federal granting process is too cumbersome and perhaps not worth the time and trouble involved, this is largely a consequence of federal grant procedures imposed by the NPS. SHPOs can, however, improve their technical review and work more closely with local communities. Grant themes and ideas are generated by Congress, NPS, and most recently by the new Latino theme study published by the NPS. The federal government is genuinely concerned about documenting underrepresented communities. There's been a significant sea change recently in recording histories that were traditionally undocumented, including Latino history as well as African American history. For example, the New Mexico SHPO is currently interviewing members of the African American community in Roswell, New Mexico focused on Baptist church history.
Many have mentioned that Latino history is primarily an oral based tradition and less driven by place than by narrative. The National Register is the National Register of Historic Places, so other tools may be needed to capture this history and culture adequately. The earlier dialogue about issues of integrity and incorporation of intangible culture into the conversation may indicate the need to rethink how that history and its significance is recognized and memorialized.

Concluding Comments

ACHP Member Bob Stanton agreed that culture needs to be understood, appreciated, and allowed to exist, to grow, and to thrive. He encouraged the group to work on institutionalizing some of these concepts and approaches before the current Administration comes to a close. The ACHP should move from listening to action as soon as possible.

Mr. Fowler indicated that the ACHP might also be able to help broker some assistance to the Chimayo community to address the serious preservation challenges there. For example, the National Trust for Historic Preservation has HOPE (Hands On Preservation Experience) crews, groups of young trainees in preservation skills that it can deploy when it gets sponsorship from an organization or a government entity. Perhaps the Forest Service or the NPS could collaborate with the local community members to get a crew in to do landscape restoration or building stabilization. There may be others that listening session participants can think of.

As for the question, how might the ACHP, working through its members, encourage the development of some local collaborative efforts that would benefit preservation, there might be something it could do that would contribute to local activities by furthering the interaction of the people who came to the meeting.

Mr. Stanton agreed with Mr. Fowler's comments, and indicated that the ACHP could go back to its members and staff and further explore the ACHP's role in supporting local preservation programs and projects. He also suggested that retirees of local, state, and federal preservation and land management agencies might be another source of assistance in areas near where they live. For instance, a large number of NPS retirees live in the greater Santa Fe area. It would be a great opportunity for these seasoned preservationists to share their knowledge and skills as consultants or supervisors of youth working on preservation projects.

Vice Chairman Leger de Fernandez and Chairman Donaldson closed the meeting by thanking all the participants for their time and wonderful contributions. They expressed the sentiment that this would not be the end of such dialogue but a start at addressing the concerns that have been voiced.

Appendix

"Contando Cuentos/Preservando Historia" Listening Session
9 a.m.–1 p.m.

AGENDA

Welcome—ACHP Chairman Milford Wayne Donaldson and Vice Chairman Teresa Leger de Fernandez
Brief summary of session plans—ACHP Vice Chairman Leger de Fernandez
Background and goals—John Fowler, ACHP Executive Director
Introductions and initial comments from invited organizations and individuals
Comments from preservation partners
Jeff Pappas, Ph.D., New Mexico State Historic Preservation Officer
Juli Polanco, California State Historic Preservation Officer
Stephanie Toothman, Ph.D., National Park Service
Moderated discussion—Vice Chairman Leger de Fernandez
Observations from other ACHP members
Robert Stanton, Expert Member
Arthur "Butch" Blazer, Deputy Undersecretary, U.S. Department of Agriculture
Katherine Slick, ACHP Alumni Foundation
Thank you and next steps—Chairman Donaldson and Vice Chairman Leger de Fernandez

LISTENING SESSION PARTICIPANTS

Rebecca L. Avitia, Executive Director, National Hispanic Cultural Center
Elmo Baca, Board Member, New Mexico Humanities Council, and NM Main Streets consultant
David Benavides, New Mexico Legal Aid (*Acequias*)
***Pilar M. Cannizzaro, Preservation Planning Manager, NM SHPO/HPD**
John Garcia, Executive Vice President, Home Builders Association of Central New Mexico and former citizen member, ACHP
Niña Johnson, Executive Director, Cornerstones Community Partnerships
Ernest Ortega, NPS (retired)
Michelle Otero, educator, author, and poet, Valle Encantado, Albuquerque
Jeff Pappas, NM SHPO and Director, Historic Preservation Division (HPD)
Julianne Polanco, California SHPO and Director, Office of Historic Preservation
Estevan Rael-Galvez, Author, Consultant, and member, American Latino Scholars Expert Panel; former Senior Vice President, National Trust for Historic Preservation and Executive Director, National Hispanic Cultural Center
Eric Romero, Professor of Indo-Hispanic Studies, New Mexico Highlands University
Tomas Romero, Executive Director, Northern Rio Grande National Heritage Area
Eric Shultz, Mayordomo/Acequia
***Don Usner, Ventana de Luz Photography/Chimayo**
Arnold Valdez, Valdez and Associates/Rezolana Farm
***Barbara Zook, Architect, NM SHPO/HPD**

**Participated in tour, but not in listening session*

ACHP MEMBERS AND ASSOCIATES

Milford Wayne Donaldson, FAIA, Chairman; Architect and former California SHPO
Teresa Leger de Fernandez, Vice Chairman; Attorney, Leger Law and Strategy, LLC, Santa Fe
Robert G. Stanton, Expert Member, ACHP; former Director, National Park Service
Arthur "Butch" Blazer, ACHP agency representative; Deputy Undersecretary for Natural Resources and Environment, U.S. Department of Agriculture
Stephanie Toothman, Ph.D., ACHP agency representative; Associate Director, Cultural Resources, Partnerships, and Science, National Park Service, U.S. Department of the Interior
Jerry L. Rogers, NPS (retired); former Regional Director, SW Region, NPS (invited observer)
Katherine Slick, ACHP organizational observer; President, ACHP Alumni Foundation; former NM SHPO
John Fowler, Executive Director, ACHP
Susan Glimcher, Director, Office of Communications, Education and Outreach, ACHP
Ronald D. Anzalone, Director, Office of Preservation Initiatives, ACHP

STUDY TOUR
Wednesday, October 14, 2015

In order to get a better understanding and feel for some of the issues involved in preserving Hispanic heritage in New Mexico, ACHP members traveled northeast of Santa Fe. This day-long tour, which included ACHP members and staff as well as two staff members from the New Mexico SHPO, visited the historic Hispanic village of **Chimayo** and the nearby mountain villages of **Truchas** (established 1754) and **Las Trampas** (founded 1751, an NHL with its historic church (1776, NHL). The ACHP representatives were accompanied by Don Usner, a local photographer, author, and community historian and activist, with extensive family ties to Chimayo and the region. Also with the group were Pilar Cannizaro and Barbara Zook of the New Mexico SHPO. Chimayo is famous for its religious shrine, El Santuario de Chimayo (1816, NHL). The shrine is known as the "Lourdes" of New Mexico, and is associated with religious pilgrimages and miraculous cures. The village was also historically known as a chile farming and traditional weaving and craft center. Mr. Usner has written several books and taken many photographs of Chimayo and its resources. His book *Sabino's Map*, originally conceived as a cultural geography study of the community, has captured many aspects of history and culture through oral histories from the *viejitos* (older inhabitants) as well as written records and historic photographs.

The Plaza del Cerro, a small plaza at the center of the community with its *acequia*, community chapel, adobe residential structures, and other features, was listed in the National Register of Historic Places in 1972. There is also a small community museum begun by community volunteers, including Mr. Usner. But additional efforts to restore or rehabilitate the plaza and some of its structures have met with local resistance, as well as fund-raising challenges and other difficulties. A community plan (draft 2014) has been developed by residents with considerable support from Santa Fe and Rio Arriba counties. The plan contains a variety of preservation measures, but it remains in draft. Recently plans to expand visitor and church facilities around the shrine, El Santuario, are also causing local controversy.

Truchas, a small dispersed Hispanic agricultural community in the Sangre de Cristo mountains north of Chimayo, was a location for Robert Redford's filming of *The Milagro Beanfield War* based on a best-selling novel by John Nichols. The tour passed a *morada* or religious meetinghouse that had been the subject of a Section 106 review. Finally, the group visited **Las Trampas**, another historic Hispanic village farther north with an NHL historic district (listed in 1967) and toured its historic church, San Jose de Gracia, which is also an NHL (listed 1970).

Preserving America's Heritage

BUILDING A MORE INCLUSIVE PRESERVATION PROGAM
Advisory Council on Historic Preservation
Adopted July 15, 2015

Recommended Actions to Support Asian American and Pacific Islander Efforts in Historic Preservation. The recommended actions below are intended to complement the NPS Heritage Initiative on this topic as well as other related efforts, and to support the White House Initiative on Asian Americans and Pacific Islanders [https://www.whitehouse.gov/administration/eop/aapi] announced in 2009.

Recommendations for the ACHP:

- **Federal agency guidance**. In consultation with federal members of the ACHP, prepare a fact sheet and brief accompanying guidance on consulting Asian American and Pacific Islander communities during the Section 106 process and addressing AAPI heritage concerns in the planning of federal and federally assisted projects. Offer a briefing to Federal Preservation Officers to discuss the guidance and the overall AAPI recommendations.

- **Preservation toolkit**. In partnership with the NPS, the National Conference of State Historic Preservation Officers, the National Trust for Historic Preservation, the National Alliance of Preservation Commissions, and others, create an accessible toolkit that brings together basic information on the national historic preservation program and facilitates online access and training for more detailed preservation information on the National Register of Historic Places, the Section 106 process, the Secretary of the Interior's Standards and Guidelines, historic preservation tax incentives, funding, the Preserve America program, local preservation review, and technical assistance on preservation matters, and offers general contact information and other materials potentially useful for Asian American and Pacific Islander groups involved in historic preservation.

- **Model examples and case studies**. Continue to expand existing Web materials in collaboration with such interest groups as Asian and Pacific Islander Americans in Historic Preservation (APIAHiP), the 1882 Foundation, Chinese American and Japanese American historical societies, and other AAPI community development and preservation organizations. Relevant Web materials may include additional links to case studies; area plans; Certified Local Government, Main Street, and Preserve America Community projects and programs; and other work focused on planning and preservation priority needs in historic ethnic communities and neighborhoods. Identify good examples like the "East at Main Street" AAPI community survey, and the ACHP Chairman's Award for the cooperative AAPI heritage tourism project involving the USDA Forest Service and the Wing Luke Museum. Feature these on the ACHP website, and include links from relevant websites.

- **Preservation funding**. Promote additional targeted funding for underserved communities to identify and nominate properties to the National Register in addition to the $500,000 currently in

the NPS budget, and point to the need for funding similar to past Preserve America Grants for follow-up projects in planning, interpretation and education, heritage tourism, and training.

Recommendations for Others:

- **Inventory and evaluation of historic and cultural properties**. Encourage all federal agencies to identify AAPI historic places under their jurisdiction and control, as well as to educate the public about the AAPI heritage and individuals that may be associated with previously known and interpreted sites where appropriate. Encourage the NPS, the Asian American/Pacific Islander Theme Study Panel, and others to engage in a dialogue on the National Register criteria, with the goal of creating additional explanatory guidance for evaluating and registering historic properties of significance to AAPI communities and organizations. Address how historic preservation consultants, local historians, and others evaluating and registering historic and cultural properties of particular significance to ethnic and cultural groups like AAPI communities should deal with issues like loss of historic fabric and site integrity, special property types such as religious structures and sites, places of traditional cultural value, cemeteries, and reconstructed properties.

- **Community development training**. Encourage the Department of Housing and Urban Development and other agencies to co-sponsor webinars or distance learning seminars on community development and preservation, including issues of affordable housing, neighborhood financing, and tax incentives, that can be shared with leaders in historic ethnic neighborhoods like Chinatown in Boston or Little Tokyo in Los Angeles.

Preserving America's Heritage

PRESERVATION50 AND THE ACHP PUBLIC POLICY INITIATIVE
Office of Preservation Initiatives

Background. As discussed at the July and November 2015 ACHP meetings, the membership determined that it would consider ways to improve the National Historic Preservation Program and the tools currently used under the National Historic Preservation Act (NHPA) and related authorities as part of its commemoration of the 50th anniversary of the NHPA in 2016. A review of preservation policy and program practice, leading to development of an action agenda for the future, was begun at the July ACHP meeting with a presentation by Vince Michael. Dr. Michael offered a critical review of several current preservation program tools in relation to the preservation of culturally diverse resources, with particular attention to the National Register of Historic Places, the Secretary's Standards for Rehabilitation, and the Federal Rehabilitation Tax Incentives. Dr. Michael argued that many of the tools originally developed to implement NHPA were based on preservation of the built environment and architecture, and should be rethought to more effectively address a broader range of resources important to people now and in the future.

At that time, and as a follow-up to the July meeting, each ACHP member was asked to contribute initial thoughts to launch the process for the development of ACHP policy recommendations. The specific charge given the members was: What do you see as major challenges facing historic preservation and the national historic preservation program today and into the foreseeable future? Are there unmet opportunities and needed changes to federal preservation policies and their implementation that would help address these challenges?

In their responses, members were asked to think about how preservation fares as a national priority, what they see as impediments to more widespread support, and elements of the NHPA that might be used better to advance these efforts.

For November, the member statements were shared with the entire ACHP membership and provided a basis for discussion at the meeting. After the November meeting, a synthesized statement was prepared, reviewed by the ACHP leadership, and posted on the ACHP and Preservation50 websites as well as circulated through ACHP member and partner organizations for public review and comment. The statement, titled "The NHPA at 50: Challenges and Opportunities," is attached. The statement was also promoted via the ACHP's Twitter account, and also highlighted in the Preservation50 e-newsletter sent to about 10,000 recipients who represent partner organizations and government entities in the Preservation50 partnership. We understand many of those organizations then recirculated it through their own website, social media, and newsletters.

The statement was intended to identify possible preservation priorities based on the members' statements, and was provided for public comment between January 12 and March 1. The deadline was then extended an additional 10 days in order to encourage additional feedback.

In spite of those extensive efforts, as of March 4, 2016, responses on the public document had been received from only 32 organizations and individuals. We understand that additional organizations are

preparing comments now that they know they have more time. A summary of the comments received to date is included as an attachment.

Next Steps. From this month through the end of the calendar year, the following modified draft timeline is provided to identify next steps.

- **March 2016:** The ACHP staff will compile and analyze remaining public comments. The ACHP staff will then provide an update to the members and obtain feedback on the proposed course of action at the spring 2016 ACHP meeting, and ACHP members and staff will attend, participate in, and report to the Goucher College National Forum on Historic Preservation Practice, "A Critical Examination of the Next 50 Years," taking place March 18-19, 2016, in Baltimore.
- **April 2016:** ACHP members will discuss the project and provide an update at the California Preservation Foundation annual conference, April 19-20, 2016, in San Francisco. The ACHP is organizing a panel discussion titled "Charting the Future of National Preservation Policy" at that meeting.
- **May 2016:** Public input, member views, and feedback from the Goucher Forum and the California Preservation Foundation will be considered in preparation of a draft report with initial recommendations on the proposed preservation policy agenda.
- **June-July 2016:** Obtain comments on the draft preservation policy agenda report from a wide range of preservation partners as well as strategic advisors, and present a preliminary report to the ACHP at its summer 2016 meeting for initial review and adoption.
- **August 2016:** Prepare a second draft report with more developed recommendations.
- **September 2016:** Convene a roundtable to review draft policy report and agenda, and recommend priorities for completion and implementation.
- **October 2016-November 2016:** Share the revised draft preservation policy agenda in conjunction with 50th anniversary events and the National Trust PastForward conference in Houston.
- **December 2016:** Present a final proposal at the December 2016 ACHP meeting for adoption by the members.

Following the discussion at the meeting, ACHP staff will prepare a list of priority issues for further consideration by the members.

Additional Resources Dedicated to the ACHP Public Policy Initiative. For more than a year, the ACHP and the ACHP Alumni Foundation have worked on a contracting mechanism to acquire technical support for a variety of ACHP projects. On February 29 an agreement was finalized for the ACHP to obtain additional support through the ACHP Alumni Foundation for work on the public policy project as well as other related activities. This should assist in augmenting ACHP staff capabilities for completing the project. Further information about work planning for the project will be provided at the Preservation Initiatives Committee meeting on March 15.

In addition, as part of that contract and through a cooperative arrangement with the U.S. Committee of the International Council on Monuments and Sites (US/ICOMOS), a call has been issued for examples of policies and programs from around the world that might provide good models for U.S. preservation. A copy of the public announcement and request for submissions is attached; initial responses are due April 22, 2016.

Action Needed. Members are asked to consider the range of issues identified so far, including public comments, and provide direction on priority issues for more detailed development and future discussion.

Attachments: NHPA at 50: Challenges and Opportunities
Summary of Public Views on "NHPA at 50: Challenges and Opportunities," March 7, 2016
US/ICOMOS call for international ideas, "A World of Heritage So Rich"

March 9, 2016

The National Historic Preservation Program at 50: Challenges and Opportunities

The federal Advisory Council on Historic Preservation (ACHP), one of the Preservation50 partners that was created by the NHPA, has launched an effort to examine the challenges and opportunities facing the national preservation program on its golden anniversary. The intent is to develop policy recommendations to shape the future of the program that can be transmitted to the next Presidential Administration and Congress.

An important component of the process to develop these recommendations is obtaining the views of the preservation community and the public. To that end, the ACHP has posted some initial observations on the challenges and opportunities facing the national preservation program today. These observations are based on views contributed by the ACHP members and ACHP staff, informed by presentations and discussions at recent ACHP meetings. They are not presented as either hard and fast conclusions or comprehensive strategies, but rather are intended to encourage a broader discussion about the needs of the preservation program today and how to address them. Also included are some thoughts about possible future influences on preservation that will be examined in more detail at Goucher College in Baltimore, Maryland, in a special forum on the future of preservation practice, March 18-19, 2016 (www.goucher.edu/HP).

Do you agree with the observations contained in the paper? Do you see other challenges and opportunities that should be addressed? Are there some issues or potential strategies that you disagree with or think should be recast? What are your ideas for the future of the program? Do you see a need for changes in legislation, regulations and procedures, or adminstrative policies and standards?

Comments are invited on The National Historic Preservation Program at 50: Challenges and Opportunities. Please send your comments and suggestions ***by March 11, 2016,*** *to* ***NHPA50@achp.gov.***

Fifty years after enactment of the National Historic Preservation Act of 1966 (NHPA), many of the major issues that drove the creation of the NHPA – energy, education, community revitalization – still resonate. The program has matured and can count many successes:

- Over 90,000 places worthy of preservation have been listed on the National Register of Historic Places
- Federal historic preservation tax credits have stimulated nearly $120 billion in private investment in the rehabilitation of historic properties
- Nearly 125,000 federal actions are reviewed each year for their impact on historic properties
- Federal agencies have programs and policies in place that promote stewardship of historic properties
- Tribal, state, and local governments partner with the federal government to extend the national preservation program into virtually every American community.

Despite these accomplishments, there are promises and vision of the NHPA that remain unfulfilled and preservation continues to face the challenges of a growing and diversifying nation.

A Look at the Future

The United States of 2016 is a vastly different nation than in 1966 and the challenges society faces today have likewise changed. Dr. Richard Wagner, director of the Goucher College historic preservation program, suggests that the NHPA and its policies and programs were largely shaped by five "drivers": demographics, the natural

environment, technology, economics, and the education environment of mid-20th century America. He notes that significant changes in those drivers will occur over the next fifty years, which will have a significant effect on the needs of the national historic preservation program. A look at these drivers provides some broader context for assessing the program needs for the future:

Demographics. U.S. population will grow by 25% and will be older and more diverse, with minorities becoming the majority and population growth driven largely by immigration.

Environment. Global climate change will bring sea level rise, increased storm intensity, and drought cycles.

Technology. Information and communication technology will become increasingly more accessible and powerful while technological advancement will occur in everything from materials technology to biotechnology.

Economics. Economic growth will slow in developed countries, due to shrinking populations and competition from current emerging nations, and will need new sources of stimulus.

Education. Higher education will be increasingly dependent on technology, traditional lectures and seminars will disappear, large research universities will dominate the educational landscape, continuing and specialized education will be lifelong activities due to the rapid changes in technology and the economy, and college costs and return on investment for academic disciplines will increasingly drive students' selections of majors.

Another emerging view in the preservation community is that the focus since 1966 has been on physical resources and their preservation, with insufficient attention to the cultural values and traditions-the "intangible" aspects of heritage-associated with properties. The "why" of preservation matters just as much as the "what" and the "how."

Finally, there continue to be activities carried out or supported by the federal government that threaten the nation's historic resources in much the same way that federal urban renewal and highway construction programs did 50 years ago:

Energy development and transmission. Large-scale traditional and renewable energy projects are impacting cultural landscapes, traditional cultural sites, and archaeological resources in a massive way.

Infrastructure development. Rail and highway construction, harbor development, bridge replacement, and broadband build-out are posing preservation challenges.

Urban change and redevelopment. Economic and demographic shifts have left communities with abandoned properties, excess infrastructure, and insufficient financial resources to maintain services and facilities, threatening historic properties and neighborhoods in both large cities and small towns.

Sprawl and suburbanization. Similarly, many regions of the U.S. have experienced extensive suburban and exurban sprawl, transforming rural landscapes and communities.

Reducing the federal footprint. Changes in government priorities and the methods of delivering public services leave historic federal properties without a current use and ripe for demolition or sale.

Funding historic preservation. Chronic underfunding of the governmental structure for preservation impacts the delivery of needed services to stakeholders and repeated calls for comprehensive tax reform threaten the continuation of highly-successful federal tax credits.

Acknowledging this landscape, the membership of the ACHP has begun to analyze and discuss the challenges and the opportunities confronting the national historic preservation program at fifty. Recognizing that the NHPA has

produced a comprehensive national program with a variety of highly-evolved tools and techniques to advance historic preservation goals, the task today is not to invent a completely new system, as the NHPA did in 1966. Instead, the need is to identify innovations that build on the NHPA foundations and to refine and adjust the tools currently in use, rethinking their application, to meet current and future demands. The following framework is offered as the basis for a dialogue on developing public policy recommendations to do just that.

Challenges

Developing public and political support. There is a general lack of widespread public understanding of and appreciation for the importance of historic preservation to contemporary America. In particular, the economic and environmental benefits of preservation are insufficiently documented, measured, and explained. Building an appreciation for history, culture, and preservation among young people is a critical part of this challenge.

Obtaining adequate and sustainable financial support. Failure to provide the full amount of funding authorized in the Historic Preservation Fund hampers the effectiveness of the tools provided in the NHPA. Uncertainty about the continuation of federal historic preservation tax credits undermines public-private partnerships that are increasingly important for preservation.

Providing leadership and expertise. The national preservation program needs forceful and consistent leadership at the policy level in the federal government to advance preservation as a national policy and priority. At the professional level, there are insufficient numbers and types of qualified and experienced practitioners (in both public and private sectors) in the various preservation fields and succession planning is needed to address an aging workforce.

Promoting inclusiveness. The changing face of America needs to be better reflected in the resources recognized as historic and in the professional preservation community. A more expansive approach to significance is needed, and diverse communities must be more effectively engaged and supported in preserving their own heritage and telling their part of the American story.

Recognizing the full range of the nation's heritage. In addition to acknowledging the heritage of the many diverse groups that will increasingly comprise the American public, the preservation program needs to incorporate concepts of intangible heritage and non-traditional resources, such as cultural landscapes and sites sacred to native peoples. New tools, skills, and standards will be required to do this.

Improving preservation processes and systems. Current criteria for evaluating historic significance and legal protective mechanisms need to be updated to reflect the values communities place on their heritage and to elevate outcomes over process. Complexity and over-reliance on professional expertise stifle public engagement and impede the preservation of what citizens really value.

Respecting the views and concerns of indigenous peoples. While the NHPA provides for formal participation of Indian tribes and Native Hawaiian organizations, in practice they are often overlooked or excluded. The result is that the resources they value are not properly recognized or considered in the mandated preservation processes.

Opportunities

Democratizing preservation. Social media, technology, and an expanding perception of historic significance can open the preservation program more broadly to the public. Community engagement in deciding what is important and how it should be managed can strengthen public and political support and promote diversity throughout the program.

Celebrating diversity. Emerging recognition of the diversity of the American story offers the opportunity to engage a broader public in all aspects of the national historic preservation program. This in turn can expand the inventory of recognized historic properties and better inform decisions about their preservation and use, supplementing the work done by preservation experts.

Furthering collaboration. Increasing recognition of the contributions historic preservation can make to economic development and quality of life can foster greater public-private partnerships that benefit preservation. Focusing on collaborative solutions can redirect regulatory review processes constructively and better reflect federal agency mission needs and program goals.

Supporting sustainability. Pioneering work done on the environmental benefits of historic preservation demonstrates its value as a tool for sustainable development and addressing the challenges of climate change adaptation and resilience.

Enhancing appreciation for heritage through education. Integrating cultural heritage awareness into education systems can build a better understanding among young Americans of the importance of history and historic preservation. Targeted youth conservation and service learning programs along with expanded professional and vocational training can lead to careers in preservation and broaden particpation in the field.

Rethinking established preservation processes and systems. Based on furthering the goals of inclusiveness and civic engagement, a fresh look at the procedures and criteria that guide the recognition, protection and enhancement of historic properties offers opportunities for achieving greater transparency, stakeholder and public participation, and efficiency. Such a re-examination could also promote better integration of preservation systems with other environmental and social impact processes and spur innovative thinking for new tools and techniques, especially the application of technology.

Preserving America's Heritage

SUMMARY OF PUBLIC VIEWS ON
"NHPA AT 50: CHALLENGES AND OPPORTUNITIES"
(As of March 7, 2016)
Office of Preservation Initiatives

As of March 7, 2016, the ACHP has received 32 outside comments on the document titled "NHPA at 50: Challenges and Opportunities." The original deadline for comments was March 1, 2016; the ACHP decided to extend the deadline to March 11, 2016, to provide some additional time for submissions. ACHP members will be informed of additional comments that are received.

Commenters and Responses. Responding organizations and individuals so far include the following:

- Asian and Pacific Islander Americans in Historic Preservation (APIAHiP)
- American Cultural Resources Association (ACRA)
- California Cultural Resource Preservation Alliance (CCPRA)
- Piedmont Environmental Council (PEC)
- Society for American Archaeology (SAA)
- Stephanie Ballard, Historian/Survey Coordinator, SHPO, Oklahoma
- Sara Childers, THPO, Upper Sioux Community
- Laura Henley Dean, Ph.D., Federal Preservation Officer, Rural Utilities Service, USDA
- Melvena Heisch, Deputy SHPO, Oklahoma
- Elizabeth M. Johnson, Deputy SHPO, South Carolina (responding unofficially)
- Ian Johnson, Associate Deputy SHPO, Oregon
- Lynda S. Ozan, Architectural Historian/National Register Program Coordinator, SHPO, Oklahoma
- Bill Baccus, Temecula, California
- Cherise Bell
- Jodie Coleman-Marzialo, Chair, Tolland Green Historic District Commission, Tolland, Connecticut
- Adley Cormier, Chair, City of Lake Charles, Louisiana Historic Preservation Commission
- John J. Cullinane, AIA, Historic Architect, SEARCH Training
- Peter Donalek, Friends of Cuneo Hospital, Chicago, Illinois
- Timothy J. Guyah, Archaeologist, Midwest Regional Office, Bureau of Indian Affairs
- William Kurtz, Archaeologist, Midwest Regional Office, Bureau of Indian Affairs
- Dorothy Moore, Archaeologist and Historian, Volusia County, Florida
- Cynthia Neely, Georgetown-Silver Plume NHL District, Georgetown, Colorado
- Erik F. Nelson, Senior Planner, City of Fredericksburg, Virginia
- Evan Peacock, Ph.D., Department of Anthropology and Middle Eastern Cultures, Mississippi State University
- Janet Rafferty, Professor Emerita, Department of Anthropology and Middle Eastern Cultures, Mississippi State University

- Rebecca Robles, San Clemente, California (*see CCRPA—same comment*)
- Benjamin F. Speller Jr., Ph.D., Edenton, North Carolina
- Donald Sutherland, Ph.D. (former FPO, Bureau of Indian Affairs, retired)
- Jordan Tannenbaum, Chief Development Officer, US Holocaust Memorial Museum (responding unofficially)
- Jay Thomas, U.S. Navy (former Deputy FPO; responding unofficially)
- Phyllis von Herrlich, Augusta, Maine
- David L. Winstead, Esq. (former ACHP member, GSA)

All comments received to date may be found at http://www.achp.gov/P50Comments.pdf.

In general, the majority of commenters expressed agreement with (or did not dispute) most of the challenges and opportunities identified, although many had additional suggestions. One commenter, the **American Cultural Resources Association**, offered numerous specific comments and disagreed with some of the ways in which future challenges had been expressed. Another commenter, **the Rural Utilities Service FPO,** took considerable exception to the document, its content, and the process for its creation, and went into detail about a variety of issues. Several other commenters also provided thoughtful commentaries on the issues facing preservation and its future, particularly as they relate to the underpinning and operation of the National Historic Preservation Program. All of these comments deserve and will receive detailed examination and analysis.

Some additional noteworthy observations included the following:

Challenges/Needs:

The value and relevance of preservation needs to be emphasized, documented, and communicated effectively.

We need to be realistic in scope and expectations for the program, including public funding level, and offer excellence at smaller scale.

Emphasize more effective leadership, better communication, enhanced use of technology, increased public awareness, and education as priorities.

Enhance available funding for preservation, across the board but especially for tribes.

The role of the federal government and the details of Section 106 and agency preservation programs under Section 110 need to be scrutinized in depth for their contributions as well as possible improvements.

Build capacity for inclusiveness, outreach, and leadership development, particularly for underserved communities.

Provide better support for localities, including Certified Local Governments, and clarify the relationship to federal and state standards and programs.

Look to improving effectiveness for historic preservation review and consultation, but not to the point of streamlining away successful preservation outcomes.

Advancing scientific knowledge needs additional emphasis.

Address the challenges and threats posed by climate change, and among other things support National Register records digitization.

Find better ways to deal with cumulative impacts and with perceived weakening of the Section 106 process for a variety of reasons.

Deal with the issues surrounding downsizing of the federal footprint.

Other needs and challenges: power lines that should be buried; abatement of lead paint; preservation of pioneer cemeteries; identification and protection of mid-century modern buildings; preservation of the archaeological record and records; preservation of historic roads and other linear features; preservation of burial grounds and traditional cultural places; ensuring tax credits for preserving archaeological sites; addressing affordable housing needs; developing enhanced techniques for preservation and sustainability; develop better economic analysis tools.

All of the comments will require more in depth examination as decisions are made about the key issues moving forward.

ACHP Staff Consideration. In addition to the request for input that was posted on both the ACHP and Preservation50 websites, and advertised in a variety of newsletters and social media, approximately half the ACHP staff met on March 2 to discuss the paper and consider possible issues. As a follow-up, all ACHP staff members were invited to offer suggestions on one action, either in preservation policy or as part of its mission and program, that the ACHP could address over the next year or more to advance preservation and the ACHP's role. Staff were also invited to suggest a higher level policy recommendation that might be implemented through the broader preservation community. Office of Preservation Initiatives staff will compile those ideas.

Supplementary Information. Additional comments collected from Web and other responses will be shared with the members in time for the discussion on Preservation50 at the ACHP meeting in Tampa. Ideas gleaned from the ACHP staff will also be collected for that meeting, and the longer, multi-faceted comments will be analyzed.

Action Needed. The ACHP members should offer their feedback on the public input to date, as well as any recommendations they wish to offer for additional refinement and review among members of the public and the preservation community. Members should also offer any initial thoughts on priorities for recommendations as part of the proposed policy agenda.

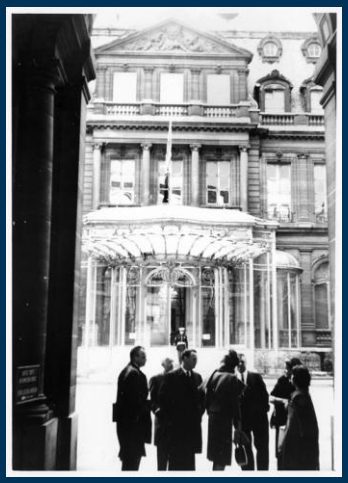
March 9, 2016

CALL FOR SUBMISSIONS:

The World's Best Preservation Ideas

Even before the World Heritage Convention of 1972, American historic preservationists understood their work in a worldwide context.

Just over fifty years ago the Rains Committee traveled through 8 European countries to study their historic preservation programs. Many of the best ideas they found were enshrined in the 1966 National Historic Preservation Act (NHPA).



On this 50th anniversary of the NHPA, we ask "What can and should U.S. preservation law and federal programs look like for the next 50 years?"

US/ICOMOS, in collaboration with the U.S. Advisory Council on Historic Preservation (ACHP), is conducting a Virtual Rains Committee International Tour to solicit short essays describing interesting and useful approaches to heritage law, policy, program strategy, and related preservation challenges from around the world that can help point the way to innovations in U.S. heritage practice over the next 50 years.

We seek your assistance in submitting short descriptions of ideas that are already in practice and working in countries across the globe. All promising examples are welcome. Ideas could include but are not limited to:

- Preservation as a tool for sustainable development
- Addressing the challenges of climate change adaptation and resilience
- Democratizing preservation
- Promoting inclusiveness
- Ideas of authenticity, significance and integrity
- Rethinking established preservation processes and systems
- Community-based valuation of heritage resources

We are requesting personal information and a short description (no

Read more about the joint US/ICOMOS and ACHP project "With a World of Heritage so Rich" and Submit your idea

more than 300 words) of your international example of preservation excellence **by Friday, April 22, 2016**.

Please submit your idea here:
http://www.usicomos.org/about/call-for-submissions/

After the submission period ends, approximately eight ideas will be selected for further development and subsequent publication. Authors will receive a stipend of $1,000 for their work. These essays will be used by the ACHP to develop policy recommendations that can be transmitted to the next Presidential Administration and Congress. They will also be published in a short booklet entitled "With a World of Heritage So Rich: Lessons from Across the Globe for U.S. Historic Preservation in its Second 50 years."

To learn more about the opportunities and challenges facing preservation in the United States, read this statement from the ACHP.

To learn more about the entire project, please visit the Call for Submissions page on the US/ICOMOS website.

Yours in heritage,

Andrew Potts

Executive Director, US/ICOMOS

on our Call for Submissions page at usicomos.org.

US/ICOMOS is a U.S. historic preservation nonprofit whose mission includes both supporting the UNESCO World Heritage program and promoting international exchange in the cultural heritage field.
You can learn more about us at **usicomos.org**.

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Preserving America's Heritage

DRAFT POLICY STATEMENT ON HISTORIC PRESERVATION AND COMMUNITY REVITALIZATION

Background. Preservation Initiatives Committee Chairman Brad White briefly updated the members during the November 4, 2015, business meeting about the status of the draft Policy Statement on Historic Preservation and Community Revitalization (Policy Statement). Members were provided the newest version of the draft Policy Statement that had been developed with the assistance of the Working Group convened in December 2014. During the business meeting, Mr. White provided a summary of the draft Policy Statement and clarified that this document would be published in the *Federal Register* to provide the public a 30-day review period. Prior to publishing the draft Policy Statement in the *Federal Register*, members were invited to submit their comments to staff.

Current Status. Only a few members submitted comments for consideration by staff. These comments recommended that the Policy Statement be revised to address the following:

- Focus on rural and tribal communities as well as Legacy Cities;
- Emphasize the value of preparing local architectural and archeological surveys;
- Emphasize how the principles apply to Section 106 of the National Historic Preservation Act;
- Reference the role of field, regional, and state offices in preserving local assets;
- Address how Section 106 reviews can be expedited; and
- Define how creative mitigation measures can facilitate preservation in communities.

The Policy Statement was revised to address these comments. Subsequently, the ACHP published the draft Policy Statement in the *Federal Register*, requesting that the public review the document and address the following questions in any comments they might provide to the ACHP:

1. How can the principles in the draft Policy Statement help communities balance the goal of historic preservation and the revitalization of neighborhoods and communities?

2. How will the principles in the draft Policy Statement establish a framework for decision making when communities receive federal funding to assist distressed neighborhoods?

3. How will State Historic Preservation Officers and Certified Local Governments apply the principles in their review of local revitalization programs?

4. Will the draft Policy Statement assist federal, state, and local officials; developers; residents; and other stakeholders to explore alternatives for preserving historic properties in planning revitalization projects?

5. How can the adoption of creative mitigation measures help a community to preserve its historic properties?

6. What form of guidance will be needed to implement the principles in this draft Policy Statement?

7. Are there any other major obstacles to using historic preservation tools in community revitalization projects that have not been addressed in this draft Policy Statement?

Upon receipt of the public comments, the Policy Statement will be adjusted as necessary and appropriate to address public comment. The final Policy Statement will be submitted to the members for approval through an unassembled meeting following any revisions.

Action Needed. The *Federal Register* Notice can be found at https://www.gpo.gov/fdsys/pkg/FR-2016-03-03/pdf/2016-04640.pdf Members are encouraged to provide any additional comments they may have to staff by March 30.

March 9, 2016

Preserving America's Heritage

SUSTAINABILITY, CLIMATE CHANGE, AND HISTORIC PRESERVATION
Office of Preservation Initiatives

Background. Consideration of policy issues and interagency coordination related to historic preservation, sustainability, and climate change is the purview of the Preservation Initiatives Committee through a subcommittee chaired by Terry Guen.

Council on Climate Preparedness and Resilience Follow-Up. ACHP members will recall that the ACHP is a member of the interagency Council on Climate Preparedness and Resilience (CCP&R) that is chaired by the Council on Environmental Quality (CEQ), the Office of Management and Budget (OMB), and the White House Office of Science, Technology and Policy (OSTP). Following a discussion about climate change at the Preservation Initiatives Committee meeting in November, a motion was advanced and adopted by the full membership to call upon the CCP&R to promote a federal leadership role in addressing the cultural heritage aspects of climate adaptation. On December 22, Chairman Wayne Donaldson sent a letter (http://www.achp.gov/docs/ccpr-recommendations.pdf) to OMB Director Shaun Donovan and CEQ Managing Director Christy Goldfuss that conveyed the ACHP's call to action and outlined several suggested steps that the CCP&R could take within the context of existing initiatives. No reply to this correspondence has yet been received.

However, the CCP&R met again on February 16, 2016. Director of Preservation Initiatives Ron Anzalone represented Executive Director John Fowler. (Note: Deputy Assistant Secretary of Defense and ACHP designee Maureen Sullivan represented the Department of Defense at the meeting.) The President's Science Advisor, John Holdgren, along with Director Donovan and Managing Director Goldfuss, co-chaired the meeting. Discussions centered on FY 2016 appropriations and the President's FY 2017 budget, priority actions in 2015 and proposed resilience priorities for 2016, and brief reports on incentives for disaster planning, private sector engagement, and climate change as a national security issue.

Eight priorities were identified for 2016:

1. Remove barriers and create incentives for resilient investments.
2. Implement federal flood risk management standards.
3. Strengthening public-private partnerships for resilience.
4. Building resilience to catastrophic climate-related hazards.
5. Place-based approaches to resilience.
6. Actionable climate information, data, and tools.
7. Climate change and national security.
8. Ecosystem services guidance.

Following the meeting, feedback was requested on the identified priorities. Partially in response to the CCP&R's request for such feedback, Mr. Fowler sent the following communication:

> *In response to your request for feedback on the proposed 2016 resilience priorities, the ACHP has no objections to the list as drafted. We would like to take this opportunity, however, to note that climate*

impacts on historic resources is a serious cross-cutting issue for the proposed priorities and a potential problem with which Indian tribes, states, localities, and federal agencies increasingly are having to grapple. Reflecting the level of interest in these issues, a national conference - Keeping History Above Water - will be held in April. Developed by national, state, and local non-profit organizations, the conference is receiving federal, state, and local government funding.

In general, the ACHP reiterates the recommendation made in our letter of December 22, 2015 (see attached): the Council on Climate Preparedness and Resilience should promote a federal leadership role in addressing the historic heritage aspects of climate adaptation. Specific to the proposed 2016 priorities, the ACHP offers the following observations, a few examples of how the issue of climate resilience and historic resources is germane to these priorities.

Priority #1: Remove Barriers and Create Incentives for Resilient Investments - Several of the identified outcomes could have significant impacts on the future treatment of historic resources in local historic districts and otherwise, notably FEMA flood insurance affordability and HUD community planning.

Priority #2: Implement the Federal Flood Risk Management Standard (FFRMS) - The Guidelines for Implementing the FFRMS note the importance of considering impacts to historic resources as the FFRMS is operationalized.

Priority #3: Strengthening Public-Private Partnerships for Resilience - A potential partner is the Union of Concerned Scientists, author of the 2014 report National Landmarks at Risk.

Priority #4: Building Resilience to Catastrophic Climate-Related Hazards - Major catastrophes, such as Hurricanes Katrina and Sandy, have highlighted the potential impacts of such events on historic resources and the need for pre- and post-disaster funding to help protect and reclaim significant public and private heritage assets.

Priority #5: Institutionalizing Place-Based Approaches to Resilience - As previously noted in our letter, place-based efforts offer a key opportunity to help local communities plan for making their historic resources more climate resilient.

Priority #6: Actionable Climate Information, Data, and Tools - As previously noted in our letter, some guidance and data on climate resilience and historic resources is available through the Climate Resilience Toolkit, but it needs to be presented in a more user-friendly way.

Priority #7: Climate Change and National Security - The Sendai Framework for Disaster Risk Reduction, signed onto by the U.S. government last year, is a planning tool to help nations be resilient in the face of destabilizing climate disasters. The theme of protecting historic resources is integrated into the Framework.

The ACHP also would like to express support for the proposed development of a Resilience Roadmap. We would encourage that such a document reference protection of historic resources and, if case studies are used, include at least one centered on historic resource resilience issues.

CEQ thanked the ACHP for its suggestions and indicated an interest in working with the ACHP as the climate change initiative moves forward.

CEQ Issues New Guiding Principles for Sustainable Federal Buildings. On February 26, CEQ released an update to the existing Guiding Principles for Sustainable Federal Buildings

(https://www.whitehouse.gov/sites/default/files/docs/guiding_principles_for_sustainable_federal_buildings_and_associated_instructions_february_2016.pdf). Executive Order 13693, "Planning for Federal Sustainability in the Next Decade," which was issued in March 2015, had mandated revision of the Guiding Principles. The Guiding Principles apply to federally owned buildings over 5,000 square feet. The document addresses new construction, major renovation of existing buildings, and management of existing buildings. Agencies must ensure adherence to the Guiding Principles on at least 15 percent of their existing buildings (either by building or by square footage) no later than FY 2025. While an earlier draft of the document did not specifically address historic properties, the final version references protecting historic resources at several key points.

When asked to review an earlier draft of the document, ACHP staff noted no conflict with preservation of historic buildings, but pointed out to CEQ that the draft represented a missed opportunity to call out applicability of the Guiding Principles to historic buildings. The previous draft did not reference historic properties at all except in one example. Staff suggested specific language be added to the sections on 1) integrated design for new construction/modernizations and 2) integrated assessment, operation, and management principles for existing buildings. CEQ did not use this language in the final draft, but both sections now include references to protecting historic resources (pages 6 & 12), as does the section on selecting sustainable locations for new construction (page 5).

Now that the Guiding Principles have been revised, staff proposes to revise the ACHP's 2011 guidance, *Sustainability and Historic Federal Buildings: Integrating the Requirements of the National Historic Preservation Act with the Requirements of Executive Order 13514.* Executive Order 13514 has been revoked and replaced with Executive Order 13693, which mandated the update to the Guiding Principles. The report addressed the then-current version of the Guiding Principles.

US/ICOMOS Meetings on the Sendai Framework for Disaster Risk Reduction. In Washington, D.C. on March 10-11, the United States Committee of the International Council on Monuments and Sites (US/ICOMOS) is hosting a series of meetings on the Sendai Framework for Disaster Risk Reduction. (http://www.preventionweb.net/files/43291_sendaiframeworkfordrren.pdf) This new international model for disaster planning was signed onto by the U.S. government last year. Planning for the protection of cultural resources is integral to the framework and will be the focus of the meetings. There will be an expert roundtable, a briefing session for State Historic Preservation Officers, and a working meeting on mainstreaming cultural heritage into United States implementation of the Sendai Framework. The ACHP has been invited to participate, and Office of Preservation Initiatives staff member Druscilla Null will be attending. Information on the outcomes of the meeting will be shared with the Preservation Initiatives Committee during its conference call prior to the business meeting.

Keeping History Above Water Conference. This national conference (www.historyabovewater.org), which will be in Newport, Rhode Island, on April 10-13, will focus on what preservationists, engineers, city planners, legislators, insurers, historic home owners, and other decision makers need to know about sea level rise and what can be done to protect historic properties. The event is sponsored by the Newport Restoration Foundation partnering with the National Trust for Historic Preservation, Union of Concerned Scientists, Preserve Rhode Island, Roger Williams University, Salve Regina University, and the University of Rhode Island Coastal Resource Center. The National Park Service (NPS) is a sponsor and is represented on the program committee. Ms. Null will be attending the conference.

Immediately following the conference, the National Trust is convening a meeting of the participants who attended the February 2015 workshop that resulted in the Pocantico Call to Action on Climate Impacts and Cultural Heritage (http://www.ucsusa.org/sites/default/files/attach/2015/05/Pocantico-Call-to-Action-on-Climate-Impacts-Cultural-Heritage-4-29-2015.pdf). The purpose of the meeting will be to consider

the progress that has been made in the past year and to plan collaborations for the year to come. Mr. Fowler will be attending.

NPS Preservation Brief on Flood Threats Under Development. The NPS has begun work on a new Preservation Brief, tentatively titled "Addressing the Threat of Floods and Rising Water to Historic Buildings." A draft outline has been developed, and ACHP staff has been provided a copy for review.

Action Needed. The Preservation Initiatives Committee should briefly discuss efforts to date and invite further suggestions from the members on ways to elevate consideration of historic resources and historic preservation issues within climate preparedness and resilience policy.

March 9, 2016

Preserving America's Heritage

ACHP LEGISLATIVE AGENDA
114th CONGRESS
PROPOSED ACHP ACTION ITEMS
Office of Preservation Initiatives

Four bills pending in Congress offer opportunities for the ACHP to support efforts to build a more inclusive preservation program. Information on the bills and a proposed motion in support are outlined below. Regarding other bills of interest, a summary of recently introduced bills and a status update on previously introduced bills is provided in the briefing paper, "ACHP Legislative Agenda, 114th Congress, New Bills and Status Updates." There also is a shorter separate briefing paper on the tax legislation, "ACHP Legislative Agenda, 114th Congress, Status of Tax Legislation."

Bill to reauthorize the Historically Black Colleges and Universities Historic Preservation program (H.R. 295) (http://www.achp.gov/docs/legislativeactionitems/HR 295.pdf). Introduced on January 13, 2015, this bill would reauthorize the Historically Black Colleges and Universities (HBCU) historic preservation grant program. In 1996, Congress authorized the program to support the preservation and restoration of historic buildings and structures on the campus of HBCUs. The funding source is the Historic Preservation Fund (HPF). The authorization for the program has expired, and the last year that HPF funding was appropriated was 2006. (There was a one-time infusion of funds from the American Recovery and Reinvestment Act in 2009.) H.R. 295 would reauthorize the program for 10 years. Introduced by Rep. James Clyburn, the bill is co-sponsored by 41 other members of the Congressional Black Caucus.

Most HBCUs were founded following the Civil War to provide an equal opportunity for education to African Americans during the era of Reconstruction, and many of these campuses have historic buildings from that period. A system of 107 HBCUs was established across the mid-Atlantic and south. They remain important symbols of the historic African American struggle for equality and continue to provide education for new generations.

On February 11, 2016, the House Natural Resources Subcommittee on Federal Lands held a hearing on the bill. Stephanie Toothman testified (http://www.achp.gov/docs/legislativeactionitems/NPS Testimony on HR 295.pdf) for the National Park Service (NPS) in support of the bill. Her testimony highlights the need for bricks-and-mortar funding for HBCU preservation projects.

U.S. Civil Rights Network Act (S. 2309)(http://www.achp.gov/docs/legislativeactionitems/S 2309.pdf)/***African American Civil Rights Network Act (H.R. 3683)*** (http://www.achp.gov/docs/legislativeactionitems/HR 3683.pdf). Introduced in the autumn of 2015, these nearly identical bills would establish within NPS a program called the "U.S. Civil Rights Network" relating to the African American civil rights movement during the period from 1939 through 1968. The U.S. Civil Rights Network would encompass: (1) all relevant NPS units and programs; (2) other federal, state, local, and privately owned properties that relate to the African American civil rights movement and that are included in, or eligible for, the National Register of Historic Places; and (3) other governmental

and nongovernmental facilities and programs of an educational, research, or interpretive nature that are directly related to such movement.

In administering the network, NPS would be required to: (1) review civil rights movement studies and reports that may already be underway or completed, such as the congressionally mandated *Civil Rights In America: A Framework for Identifying Significant Sites*; (2) produce and disseminate educational materials, such as handbooks, maps, interpretive guides, or electronic information; (3) provide technical assistance; and (4) adopt an official, uniform symbol or device for the network and issue regulations for the symbol's use.

Hearings have not yet been held on the bills, so NPS has not presented a formal position to Congress. However, in 2010, NPS testified in support of another bill addressing civil rights related sites, the United States Civil Rights Trail Special Resource Study Act. Had it become law, that bill would have directed the Department of the Interior (DOI) to conduct a special resource study to evaluate a range of alternatives for the protection and interpretation of sites associated with the struggle for civil rights in the United States, including alternatives for potential addition of some or all of the sites to the National Trails System. NPS and DOI also have proposed targeted funding of $25.5 million in the FY 2017 budget for competitive grant funding to preserve the sites and stories of the Civil Rights movement.

Preservation Research at Institutions Serving Minorities (PRISM) Act (S. 805/H.R. 1541) (http://www.achp.gov/docs/legislativeactionitems/S 805.pdf). This bill (introduced last March) would amend the National Historic Preservation Act (NHPA) to make universities and colleges serving Hispanic Americans, Asian Americans, and Pacific Islanders eligible for technical and financial assistance that DOI is authorized to provide for the establishment of preservation training and degree programs. HBCUs, tribal colleges, and colleges with a high enrollment of Native Americans or Native Hawaiians already are authorized to receive assistance. Congress has not appropriated funds for this assistance program since 2009.

As introduced, the bill only addressed Hispanic-serving institutions. During markup by the House Committee on Natural Resources, the bill's scope was widened to include colleges and universities serving Asian Americans and Pacific Islanders. The House passed its version of the bill on November 30, 2015. Hearings with witness testimony have not been held on the bill in either the House or Senate, so NPS has not presented a formal position to Congress. However, the PRISM Act also was introduced in the previous Congress, and ACHP staff is unaware of any objection to the bill from NPS at that time or more recently.

Native American Tourism and Improving Visitor Experience (NATIVE) Act (S. 1579/H.R.3477) (http://www.achp.gov/docs/legislativeactionitems/S 1579.pdf). This bill (introduced June 16/September 10) seeks to promote economic development in Indian Country through the expansion of cultural and heritage tourism. It would require federal agencies with tourism assets and responsibilities to include tribes and Native organizations in national tourism efforts and strategic planning. It also would provide Native Hawaiian, Alaska Native, and American Indian communities with access to resources and technical assistance needed to build sustainable recreational and cultural travel and tourism infrastructure and capacity.

Among the detailed proposals in the bill, agencies would be required to develop innovative visitor portals for parks, landmarks, heritage and cultural sites, and assets that showcase the diversity of the indigenous peoples of the United States. It would also require each agency to: (1) help empower Indian tribes and organizations to showcase their heritage, foods, traditions, history, and continuing vitality; (2) support the efforts of Indian tribes and organizations to provide visitor experiences that are authentic and respectful;

and (3) enhance efforts to promote understanding and respect for diverse cultures and subcultures in the United States.

The bill would authorize the use of federal grants for which Indian tribes or organizations currently are eligible to: (1) support efforts to tell their story as the First Peoples of the United States; and (2) use the arts and humanities to help revitalize Native communities, promote economic development, increase livability, and present the uniqueness of the United States to visitors in a way that celebrates its diversity.

The bill is supported by the U.S. Travel Association, American Indian and Alaska Native Tourism Association, Southeast Tourism Society, Western States Tourism Policy Council, National Congress of American Indians, Alaska Federation of Natives, Council for Native Hawaiian Advancement, Native American Contractors Association, and the Native Enterprise Initiative of the U.S. Chamber of Commerce.

The Senate bill was reported out of committee on January 12, 2016. The House Natural Resources Subcommittee on Indian, Insular and Alaska Native Affairs held a hearing on the bill on February 24, 2016. Ann Marie Bledsoe Downes, DOI's Deputy Assistant Secretary for Policy and Economic Development in Indian Affairs, testified (http://www.achp.gov/docs/legislativeactionitems/DOI Testimony on HR 3477.pdf) that the Administration supports the bill but noted the need for adequate funding to carry out its mandates.

A Motion for ACHP Member Consideration. Passage of any or all of these bills would help to build a more inclusive preservation program, a fundamental goal of the ACHP's strategic plan. Thus, staff suggests that the members consider adoption of the following motion:

> Moved, that the ACHP supports the following bills–a bill to reauthorize the Historically Black Colleges and Universities Historic Preservation program (H.R. 295), the U.S. Civil Rights Network Act African American Civil Rights Network Act (S. 2309/H.R. 3683), Preservation Research at Institutions Serving Minorities (PRISM) Act (S. 805/H.R. 1541), and the Native American Tourism and Improving Visitor Experience (NATIVE) Act (S. 1579/H.R.3477)–and directs the chairman to convey to Congress its support of these bills and the importance of building a more inclusive preservation program.

March 9, 2016

Preserving America's Heritage

ACHP LEGISLATIVE AGENDA
114th CONGRESS
NEW BILLS AND STATUS UPDATES
Office of Preservation Initiatives

The following update briefly summarizes newly introduced legislation and provides the status on previously introduced bills. It is organized by legislative agenda issue area as endorsed by the ACHP last year. The progress of these bills is being monitored by ACHP staff.

Reauthorizing and Fully Funding the Historic Preservation Fund

- HPF Reauthorization and Full Funding. As of midnight September 30, deposits of Outer Continental Shelf oil lease revenues into the Historic Preservation Fund (HPF) ceased when funding authorization expired. The fund has a remaining balance of $3 billion that can be drawn upon in the short term, but reauthorization of the revenue stream into the fund is critical for the federal preservation program's long-term viability. In a very positive development, the Administration signaled its support for permanent authorization of the HPF in the FY 2017 budget request that was released by the President on February 9. The proposed budget includes a legislative proposal to add a provision regarding HPF authorization to the National Park Service Centennial Act. (For more information on the current version of this bill, see below.)

  On February 11, the House Federal Lands Subcommittee held a hearing on the National Historic Preservation Amendments Act (H.R. 2817), which would reauthorize the HPF through 2025. While the Subcommittee did not take formal action, statements and questions from its members showed general bipartisan support. The National Park Service (NPS) testified in support of the bill (http://www.achp.gov/docs/legislativeupdates/NPS Testimony HR 2817.pdf), as did the National Conference of State Historic Preservation Officers (http://www.achp.gov/docs/legislativeupdates/NCSHPO Testimony HR 2817.pdf). Chairman Wayne Donaldson submitted written testimony for the record (http://www.achp.gov/docs/legislativeupdates/ACHP Testimony for the Record HR 2817.pdf) from the ACHP and also sent a letter (http://www.achp.gov/docs/legislativeupdates/ACHP to Rep McClintock on HR 2817.pdf) to Subcommittee Chairman Thomas McClintock, urging the Subcommittee to support the bill and also to consider advancing a permanent (rather than a 10-year) authorization. (This testimony also addresses the potential for H.R. 2817 to be a vehicle for creating a full-time ACHP chair and for extending voting membership to NATHPO. For more information, see below.)

  In the Senate, the Energy Policy Modernization Act (S. 2012), includes permanent reauthorization of the HPF. The bill, if passed, would be the first comprehensive energy policy bill since 2007. During late January and early February, the bill came before the full Senate for consideration, but a vote to close debate was unsuccessful. As of this writing, there was a pending motion to reconsider cloture (end debate) introduced by the Senate Majority Leader.

Two other bills that also include HPF reauthorization provisions are the American Energy Innovation Act (S. 2089), which has not seen action in Congress since September 2015, and the Sportsmen's Act (S. 556), which was reported out of committee on December 16, 2015.

- FY 2016 and FY 2017 Funding. As 2015 drew to a close, Congress passed the Consolidated Appropriation Act (H.R. 2029), which finalized Fiscal Year 2016 federal funding levels. The results were generally positive for historic preservation. The ACHP received the amount requested in the President's budget, $6.083 million, which represents a 2 percent cut from 2015. Funding remained level for State Historic Preservation Officers (SHPOs), but funding for Tribal Historic Preservation Officers (THPOs) rose 11 percent. The grant program to help broaden the inclusion of underrepresented communities in statewide inventories and the National Register of Historic Places received level funding, and the Administration's proposed initiative to preserve the sites and stories of the Civil Rights movement was launched with $8 million. Funding for National Heritage Areas sustained only a 2 percent cut instead of the 50 percent cut requested by the Administration.

  On February 9, the President released his budget request for FY 2017. The ACHP would be funded $6.493 million, an increase of $413,000. The HPF would be funded at $87.4 million, an increase of $22.0 million over 2016. The vast majority of this increase would be for the Civil Rights initiative. Competitive grant funding to preserve the sites and stories of the Civil Rights movement would rise from $8.5 million to $25.5 million. Historically Black Colleges and Universities, which did not receive preservation grant funding last year, would receive $3 million. THPOs would see a boost of $2 million bringing their funding level to $9.985, while SHPO funding would remain level at $46.925. The underrepresented communities grant program would remain level at $500,000. As in previous years, the Administration has again called for more than halving the budget for the Heritage Partnership Program, the source of funding and technical assistance for National Heritage Areas. These funds do not come from the HPF, but rather from the National Park Service's National Recreation and Preservation Account.

  Hearings on the DOI budget were held on February 23 before the Senate Energy and Natural Resources Committee and on March 1 before the House Natural Resources Committee. Secretary of the Interior Sally Jewell testified at these hearings and highlighted the budget's increased funding for the Historic Preservation Fund. (Discussion of the HPF begins on page 16 of her written testimony (http://www.achp.gov/docs/legislativeupdates/Jewell Testimony on FY2017 DOI Budget.pdf), which was identical for the House and Senate hearings.) Meanwhile, NCSHPO developed its recommendations for FY 2017 funding http://www.preservationaction.org/wp-content/uploads/2013/01/HPF-Request.pdf.

Enhancing the Effectiveness of the ACHP and the National Preservation Program

- National Historic Preservation Act Amendments. On March 3, Rep. Rob Bishop introduced a new version of the National Park Service Centennial Act (H.R. 4680) (https://www.congress.gov/114/bills/hr4680/BILLS-114hr4680ih.pdf), which would amend the National Historic Preservation Act (NHPA) to create a full-time chairman for the ACHP and extend voting membership to the chairman of the National Association of Tribal Historic Preservation Officers (NATHPO). These proposed changes were endorsed by the ACHP membership in 2013 and 2011, respectively. (For discussion of the bill's provisions regarding NPS park management, see the section of this paper entitled, "Fostering Federal Stewardship of Publicly Owned Historic Resources.")

  Two other pending bills also are potential vehicles for these proposed changes to the leadership and composition of the ACHP. On January 27, Sen. Tom Udall introduced the changes as an amendment

to the Energy Policy Modernization Act (S. 2012). A later version of the bill included the provisions relating to NATHPO membership but not the full-time ACHP chairman. S.2012 is pending floor action in the Senate. Also, as noted above, in written testimony, Chairman Donaldson urged the House Federal Lands Subcommittee to consider incorporating these suggested legislative changes into the National Historic Preservation Amendments Act (H.R. 2817).

- Technical amendments to the Act of December 22, 1974, relating to lands of the Navajo Tribe (H.R. 3911). This bill (introduced on November 4) would authorize creation of Navajo Sovereignty Empowerment Zones. Within such zones, the tribe could waive federal environmental review (including Section 106) for projects involving renewable energy development, housing development, public and community facilities, infrastructure development (including water and wastewater development, roads, transmission lines, gas lines, and rights-of-way), and related economic development. The bill has been referred to committee.

- Department of the Interior Tribal Self-Governance Act (S. 286). There has been no recent action on this previously introduced bill, which was passed by the Senate on July 7. The bill would amend the Indian Self-Determination and Education Assistance Act to strengthen the ability of tribal governments to operate federal programs as, in essence, tribal programs. It would permit tribes to assume federal agency responsibilities under the NHPA and National Environmental Policy Act for construction projects funded by federal programs that are being operated by the tribes.

Coordinating Section 106 and Section 4(f) Reviews for Surface Transportation Programs

- Fixing America's Surface Transportation Act or FAST Act (H.R. 22). On December 4, President Obama signed into law the Fixing America's Surface Transportation Act (FAST Act), a five-year, $305 billion surface transportation bill that boosts highway and transit spending. The act includes a number of provisions with implications for historic preservation and the Section 106 review process.

  Earlier versions of the bill had proposed amending the language of Section 106 to exempt railroad rights-of-way from Section 106 review. Objections from the ACHP and the preservation community led to revised language which retains the exemption without amending Section 106. Efforts to prevent changes to the Section 4(f) review process were less successful. The Department of Transportation (DOT) may now choose to use the National Environmental Policy Act and Section 106 to fulfill the requirements of Section 4(f) review if certain provisions are met. DOT is required to coordinate with the Department of the Interior and the ACHP to establish implementing procedures.

  On a more positive note, the FAST Act authorizes federal transportation funds to be transferred to federal agencies, state agencies, and Indian tribes to support activities that improve permitting and review activities. Funds may be used for planning, environmental review, dedicated staffing, training, information gathering and mapping, and development of programmatic agreements. This broadens the previous funding authorization. In the context of the Section 106 process, SHPOs and THPOs (and even the ACHP) potentially could receive funds to assist DOT in identification of and consideration of effects on historic properties.

  For further information on the implications of the FAST Act for historic preservation and the Section 106 review process see the briefing paper in this tab.

Preserving the Fundamental Integrity of the National Register of Historic Places

- National Defense Authorization Act (S. 1356). On November 25, the President signed the National Defense Authorization Act into law after vetoing a version sent to him in October. At one point in its

development, the bill had included the provisions of the previously proposed Military LAND Act, which would have amended the NHPA to allow federal agencies to prevent designation of federal properties as historic (and reverse existing designations) based on agency determinations of national security needs. In a victory for the preservation community, both the version sent to the President in October and the final version of the bill did not include such provisions.

Building a More Inclusive Preservation Program

There are four bills before Congress with implications for building a more inclusive preservation program. For proposed ACHP action on these bills, see "ACHP Legislative Agenda, 114th Congress, Proposed ACHP Action Items" in this tab. The bills are the following:

- Bill to reauthorize the Historically Black Colleges and Universities Historic Preservation program (H.R. 295)

- U.S. Civil Rights Network Act (S. 2309)/African American Civil Rights Network Act (H.R. 3683)

- Preservation Research at Institutions Serving Minorities (PRISM) Act (S. 805/H.R. 1541)

- Native American Tourism and Improving Visitor Experience (NATIVE) Act (S. 1579/H.R.3477)

Ensuring that Environmental Streamlining Does Not Waive or Weaken the Section 106 Process

- Federal Permitting Improvement Act (S. 280). This bill became law as Title 41 of the FAST Act. A non-transportation-related portion of the act, Title 41 addresses improving the permitting process for major capital projects. It creates an interagency Federal Permitting Improvement Steering Council, and the ACHP is one of 13 named members. This builds on and makes permanent the permitting streamlining initiative launched by the Obama Administration in 2012 under Executive Order 13604. The ACHP has been serving on the steering committee established under that executive order, which is the model for the newly created council. Title 41 also establishes new requirements for coordination and timing of environmental reviews for covered projects. While Section 106 is not specifically mentioned, ACHP staff are exploring to what extent Section 106 reviews will be affected by the new requirements.

- NEPA Reciprocity Act (H.R. 2497). Some of the fundamental ideas behind this bill became law in Section 1309 of the FAST Act, which requires DOT to create a pilot program for authorizing up to five states to use their own environmental laws in lieu of the National Environmental Policy Act (NEPA). H.R. 2497, which has seen no action since its introduction on May 21, would require DOT to establish a program to eliminate duplicative environmental reviews and approvals under state and federal law and use of state environmental review laws and procedures in lieu of federal environmental laws and regulations, including Section 106.

- Secure Fence Restoration Act, which includes the National Security and Federal Lands Protection Act (H.R. 4034). Introduced on November 17, this bill would waive Section 106 and a host of other environmental laws for certain specified activities of U.S. Customs and Border Protection (CBP) on all Departments of the Interior and Agriculture land within 100 miles of the borders with Mexico and Canada. Activities subject to the waiver would include construction and maintenance of roads and barriers, and installation, maintenance, and operation of communications and surveillance equipment. The bill has been referred to committee. Indicative that a waiver of Section 106 for CBP actions is not needed, a Programmatic Agreement was successfully negotiated and signed in late 2014 between the ACHP, CBP, and SHPOs and tribes along the southwest border of the United States.

- Streamlining and Investing in Broadband Infrastructure Act (S. 2163). There has been no recent action on this bill (introduced October 7), which is intended to expand broadband access in rural areas by requiring installation of broadband conduits during federal highway construction projects and by streamlining the process for broadband infrastructure development on federal land and properties. The streamlining requirements in the bill raise concerns about the feasibility of completing normal environmental reviews, including Section 106. It is similar but not identical to the Senate's Wireless Innovation Act (S. 1618), which also has seen no recent action in Congress. Both bills have been referred to committee.

- National Forest Ecosystem Improvement Act (S. 1691). There has been no recent action on this bill (introduced June 25), which would require that environmental assessments for ecosystem restoration projects under the National Environmental Policy Act (NEPA) be completed within a 180-day time frame, which potentially could constrain Section 106 compliance.

- American Energy Renaissance Act (S. 791/H.R. 1487); Federal Land Freedom Act (S. 490/H.R. 866). There has been no recent action on these bills (introduced early in 2015), which would allow states to take control of energy leasing and permitting processes on select federal lands, including substituting state programs for federal environmental requirements including Section 106 review. The bills have been referred to committee.

Fostering Federal Stewardship of Publicly Owned Historic Resources

- National Park Service Centennial Act (S. 2257/H.R. 3556; H.R. 4680). A Senate companion bill to the previously introduced House version of the Administration's National Park Service Centennial Act was introduced on November 5. The bill seeks to address pressing NPS management needs in the context of the agency's upcoming centennial. The bill provides for: codification of NPS responsibility for partnership programs; new funding for NPS projects and programs; new funding for public lands stewardship; enhancement of NPS educational program authorities; expansion of the Public Land Corps and volunteer engagement; enhancement of commercial visitor services management; new authority for reproduction of museum objects; and revisions to the National Park Foundation.

  On March 3, Rep. Rob Bishop introduced a new version of the bill, H.R. 4680 (https://www.congress.gov/114/bills/hr4680/BILLS-114hr4680ih.pdf). It includes only four of the multiple components from the Administration bill. The new bill would: create the Centennial Challenge Fund; authorize a National Park Foundation endowment; enhance NPS educational program authorities; expand the Public Land Corps and volunteer engagement; and make revisions to the National Park Foundation. As noted earlier, this version of the bill also would include amendments to the NHPA regarding a full-time chair for the ACHP and voting membership for the chairman of NATHPO.

  On November 24, following up on a motion adopted by the ACHP at its November meeting, Chairman Donaldson sent a letter (http://www.achp.gov/docs/legislativeupdates/ACHP Comments on NPS Centennial Act - Senate.pdf) supporting the Administration's bill to the House and Senate. The Administration bill was supported by NPS (http://www.achp.gov/docs/legislativeupdates/NPS Testimony on Centennial Act.pdf) at a December 8 hearing of the Senate Energy and Natural Resources Committee hearing on the bill. As noted earlier, the FY 2017 budget includes a legislative proposal to add permanent reauthorization of the HPF to the National Park Service Centennial Act.

- Los Angeles Homeless Veterans Leasing Act (S. 2013/H.R. 3484). Introduced on September 9 in the Senate and September 10 in the House, this bill would authorize the Department of Veterans Affairs

(VA) to enter into enhanced use leases at its West Los Angeles Medical Center not only to provide housing for homeless veterans (as is now the case), but also to provide other services that benefit veterans and their families. On November 30, following up on a motion adopted by the ACHP at its November meeting, Chairman Donaldson sent a letter (http://www.achp.gov/docs/legislativeupdates/ACHP Comments on Los Angeles Homeless Veterans Leasing Act - Senate.pdf) supporting the bill to the House and Senate. The correspondence also urged Congress to consider nationwide expansion of VA's enhanced use leasing authority, given the potential benefits to historic properties. The House Veterans' Affairs Committee marked up the bill on February 25 and reported the bill out favorably.

- Federal Property Management Reform Act (S. 2509). Introduced on February 4, this bill was reported out of committee on February 10 and is positioned for referral to the full Senate. The bill would: require federal agencies to maintain an up-to-date inventory of real property; require the General Services Administration (GSA) to maintain an inventory and database of all federal property; incentivize agencies to dispose of excess property by allowing them to retain and reinvest sale proceeds; and establish a Federal Property Council to develop uniform guidance for agency property managers to follow and to share best practices in property management among agencies (this would codify the existing Federal Real Property Council). In carrying out its duties, the Federal Property Council would have to consult with private sector experts in various fields, including historic preservation.

  The bill also would require the U.S. Postal Service to inventory and assess its property, and create a management template for reducing its excess and underutilized property. The bill stipulates that the Inspector General of the United States Postal Service must within two years submit to Congress a report on Postal Service excess property and recommendations for repurposing such property.

- California Desert Conservation, Off-Road Recreation, and Renewable Energy Act (S. 2568). Introduced on February 23, this bill addresses conservation, enhanced recreation opportunities, and development of renewable energy on federal lands in the southern California desert. It would: create five off-road vehicle recreation areas (equaling 142,000 acres); designate 230,000 acres as wilderness areas; add 43,000 acres to Death Valley National Park and Joshua Tree National Park; designate 77 miles of Wild and Scenic Rivers; create an 18,000 acre National Scenic Area; and clarify how desert land can be used for renewable energy development. The ACHP is mentioned by name in the bill, identified as the only non-tribal party that DOI must consult during development of a mandated management plan for tribal cultural resources associated with the Xam Kwatchan Trail network. S. 2538 affirms the right of tribes to access areas addressed in the bill for traditional cultural and religious purposes. The bill also addresses temporary closure of areas to respect the privacy of traditional cultural and religious activities.

  A similar bill in the House is the California Minerals, Off-Road Recreation, and Conservation Act (H.R. 3668). It includes some of the same provisions as S. 2568, including the reference to the ACHP and provisions regarding tribal cultural resources. However, the bill also would exempt bridge repair and replacement on a portion of historic Route 66 from Section 106 and Section 4(f) reviews, and would prohibit Presidential creation of National Monuments in some of the affected areas. On December 9, the House Natural Resources Subcommittee on Federal Lands held a hearing on the bill, at which the Bureau of Land Management testified against the bill.

- Save Oak Flat Act (S. 2282/H.R. 2811). On November 5, a Senate version was introduced for the Save Oak Flat Act (introduced in the House on June 17). The bill would repeal the section of the 2015 National Defense Authorization Act that authorized the transfer of 2,400 acres of U.S. Forest Service land in Arizona's Tonto National Forest to Resolution Copper, a subsidiary of a foreign mining

company. The area, known as Oak Flat, includes properties of religious and cultural significance to several Indian tribes. The National Trust for Historic Preservation included Oak Flat on its 2015 list of the Nation's 11 Most Endangered Historic Properties. Both the House and Senate bills remain in committee.

- Give our Seniors and Veterans the COLA they Deserve Act (H.R. 4071). Introduced on November 18, this bill would require GSA to sell all federal buildings that are not utilized by the federal government. The proceeds would be used to increase Social Security benefits and increase cost of living adjustments for the retirement benefits of veterans. The bill includes the provision, "The Administrator shall not sell a building . . . if the building, or the land relevant to such building, has been set aside for preservation or historic purposes," but does not define the term "set aside." The bill has been referred to committee.

- Border Security and Accountability Act (H.R.4303). Introduced on December 18, this comprehensive border security bill includes provisions addressing historic properties. The bill would require the Department of Homeland Security (DHS) to develop and implement a comprehensive monitoring and mitigation plan to address the ecological and environmental impacts of border security undertakings. Among other issues, the plan would have to address protection of cultural and historical resources and would apply on relevant federal, state, local, tribal, or private lands. The bill also would require that DHS law enforcement training be developed and provided in coordination with tribes to ensure that it focuses on achieving border security objectives while avoiding or minimizing adverse impacts on natural and cultural resources. The bill has been referred to committee.

- 21st Century Conservation Service Corps Act (S. 1993); Public Lands Service Corps Act (S. 1160/H.R. 2167); Veterans Conservation Corps Act (H.R. 1978). There has been no recent action on these bills (introduced in April), which would (respectively) bolster the existing 21st Century Conservation Service Corps Initiative, modernize the existing Public Lands Corps, and create a veterans conservation corps. All three bills specifically address use of service corps participants to preserve historic properties. The bills have been referred to committee.

- Moratorium on United States Postal Facilities Act (H.R. 1501). There has been no recent action on this bill (introduced March 19), which would require congressional approval of the closure, consolidation, or sale of any historic postal facility. The bill has been referred to committee.

Maintaining and Enhancing Tax Incentives for Historic Preservation

- Historic Tax Credit Improvement Act (H.R. 3846). The Historic Tax Credit Improvement Act was introduced in the House on October 28 and is designed to expand and improve the existing historic rehabilitation tax credit (HTC). The bill has been referred to committee, and a companion Senate bill is under development. More details on the pending bill and issues that have arisen with the companion Senate bill may be found in the separate paper, "ACHP Legislative Agenda, 114th Congress, Status of Tax Legislation."

- National Disaster Tax Relief Act (S. 1795/H.R. 3110). There has been no recent action on this bill (introduced July 16), which would increase the rehabilitation tax credit in federally declared disaster areas for disasters in 2012 through 2015. The bill has been referred to committee.

- Historic Downtown Preservation and Access Act (S. 932). There has been no recent action on this bill (introduced April 14) which would amend the Internal Revenue Code to allow a refundable tax credit for 50 percent of the cost of installing an elevator system or a sprinkler system in a certified historic structure. The bill has been referred to committee.

Supporting Presidential Designation of National Monuments

- Protecting Local Communities from Executive Overreach Act (H.R. 3946). Introduced on November 5, this bill would create new requirements for concurrence by local and state officials in Presidential designation of National Monuments, restrict new monuments to under 5,000 acres, and establish certain counties where no monument designation may take place. The bill has been referred to committee.

- The Preserving State Rights Act (H.R. 4132). Introduced on November 30, this bill would require approval by the state legislature and the governor of each state in which a national monument would be located. The bill has been referred to committee.

- National Monument Designation Transparency Act (H.R. 3389); National Monument Designation Transparency and Accountability Act (H.R. 900/S. 228); Marine Access and State Transparency (MAST) Act (H.R. 330); and a bill to prohibit the further extension or establishment of national monuments in Nevada (H.R. 488). There has been no recent action on these previously introduced bills, all of which would amend the Antiquities Act to limit Presidential designations of public lands as national monuments.

Encouraging Stability and Continued Growth of the National Heritage Areas Program

- National Heritage Area Act (H.R. 581). There has been no recent action on this previously introduced bill, which seeks to standardize the process for designation, funding, and federal/non-federal coordination for National Heritage Areas.

March 9, 2016

Preserving America's Heritage

ACHP LEGISLATIVE AGENDA
114th CONGRESS
STATUS OF TAX LEGISLATION
Office of Preservation Initiatives

Background. As part of the January 2016 conference call for the Preservation Initiatives Committee, staff from the National Trust offered a brief summary on the status of historic tax credit legislation along with some context. House Speaker Paul Ryan continues to press for "policy markers" for the GOP in advance of the Presidential election, including policy proposals related to tax reform. Comprehensive tax reform remains a goal, but it is unlikely that a broad proposal will emerge over the next six months. Ways and Means Committee Chairman Kevin Brady has begun his tenure with an announcement of hearings focused on tax reform policies that would promote economic prosperity. Advocates for historic tax credits, including the Historic Tax Credit Coalition (http://historiccredit.com/) and the National Trust, will look for opportunities over the coming months to highlight the historic tax credit program whenever possible.

Meanwhile, the National Park Service has just published its 2015 report on the Federal Historic Rehabilitation Tax Credit program (Annual report, http://www.nps.gov/tps/tax-incentives/taxdocs/tax-incentives-2015annual.pdf; Statistical report, http://www.nps.gov/tps/tax-incentives/taxdocs/tax-incentives-2015statistical.pdf).

Historic Tax Credit Improvement Act. The Historic Tax Credit Improvement Act (H.R. 3846) was introduced by Rep. Mike Kelly and Rep. Earl Blumenauer on October 28, 2015, with 10 original cosponsors–nine of whom are on the Ways and Means Committee. It is designed to expand and improve upon the existing historic rehabilitation tax credit (HTC). There are currently 18 cosponsors and several more waiting to be officially added. This is a strong, bipartisan bill, with seven Republican cosponsors on the Ways and Means Committee.

A section-by-section summary is attached. The bill has been referred to committee, and a companion Senate bill is under development.

In the Senate, the tax credit coalition is still awaiting Senate introduction. Of particular interest and some controversy is Section 8, which would eliminate the concept of "functionally related buildings." Department of the Interior regulations governing the historic preservation tax incentives program currently state:

> For rehabilitation projects involving more than one certified historic structure where the structures are judged by the Secretary to have been functionally related historically to serve an overall purpose, such as a mill complex or a residence and carriage house, rehabilitation certification will be issued on the merits of the overall project rather than for each structure or individual component. [36 CFR Part 67.6(b)(4)]

Thus, current practice favors and encourages adaptive use and rehabilitation of such complexes in their entirety at the expense of partial reuse and rehabilitation. Concerned that this has been hampering useful rehabilitation work because of the limitations and costs involved in dealing with such complexes holistically, the section of the proposed bill would allow an owner to obtain an unconditional Part 3 approval from the National Park Service for any set of buildings or parts of a building regardless of the future actions of another owner. The Maine SHPO, for one, has raised concerns about this section and the fact that it may lead to more projects that separate one or two buildings for rehabilitation while allowing large portions of the remaining complex to be demolished. Their concern stems in part from the number of properties in Maine that, for example, are functionally related mill complexes.

This issue was one of the areas of controversy that arose during the review of the Federal Rehabilitation Tax Credit Program undertaken by Secretary Ken Salazar and NPS in Detroit in 2013. Read a copy of the 2013 report http://www.novoco.com/historic/resource_files/research/htc_final-recommendations-and-action-plan_030113.pdf.

Since prospective lead sponsors for the Senate version of the bill are Sen. Susan Collins and Sen. Ben Cardin, the Maine SHPO's concerns with this provision have resulted in Sen. Collins' staff seeking clarification from advocates.

In its January 2016 conference call, Preservation Initiatives Committee members agreed that legitimate questions had been raised about the bill(s), and that the ACHP ought to determine the implications and whether the ACHP should or should not take a position on the legislation. Committee Chairman Brad White requested that the staff confer with NPS and others prior to the March business meeting.

The staff has therefore reached out to NPS, and confirmed that so far NPS is not taking a position on the bill. NPS is, however, aware of some of the issues related to Section 8, and was already in the process of clarifying the application of the tax program to functionally related complexes based on previous findings from Detroit. There is a feeling that the existing federal program already has considerable flexibility as it is structured, but the implications for related state tax credit programs are not clear. There is existing and extensive guidance on the NPS website on tax act certification involving functionally related structures; very large and diverse historic properties listed in the National Register as historic districts; and multiple building projects. Additional NPS guidance on this and related issues is being discussed as a result of tax credit issues that were raised in Detroit at least two years ago.

Other Pending Tax Bills. There are two other bills that the staff has been tracking since last year.

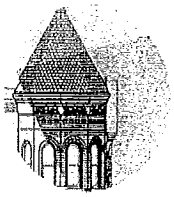
- National Disaster Tax Relief Act (S. 1795/H.R. 3110). There has been no recent action on this bill (introduced July 16), which would increase the rehabilitation tax credit in federally declared disaster areas for disasters in 2012 through 2015. The bill has been referred to committee.
- Historic Downtown Preservation and Access Act (S. 932). There has been no recent action on this bill (introduced April 14) which would amend the Internal Revenue Code to allow a refundable tax credit for 50 percent of the cost of installing an elevator system or a sprinkler system in a certified historic structure. The bill has been referred to committee.

Action Needed. The members should discuss the status of the Historic Tax Credit Improvement Act of 2015 (H.R. 3846) and identify a small subgroup to work with the staff (and consult with NPS) to more fully examine the implications of the bill, particularly possible changes to the law as they affect review of functionally related properties. The Preservation Initiatives Committee should then report to the full ACHP at the July 2016 meeting.

Attachment: "Historic Tax Credit Improvement Act of 2015 (H.R. 3846)—Section-by-Section Summary," Historic Tax Credit Coalition and National Trust for Historic Preservation, November 2015

March 9, 2016

Prosperity through Preservation
Protect and Enhance the Historic Tax Credit



HISTORIC
TAX CREDIT
COALITION

National Trust *for* Historic Preservation
Save the past. Enrich the future.

HISTORIC TAX CREDIT IMPROVEMENT ACT OF 2015 (H.R. 3846) SECTION-BY-SECTION SUMMARY

SUMMARY

The Historic Tax Credit Improvement Act (H.R. 3846) makes long overdue changes to the Historic Tax Credit (IRC § 47) to further encourage building reuse and redevelopment in small, midsize, and rural communities. It also makes the rehabilitation of community projects like theaters, libraries, and schools easier while maximizing the impact of state historic tax credits. Finally, the bill would make more historic properties eligible to use the credit by updating program requirements to reflect current industry practices. These reforms would be the first major changes to the Historic Tax Credit (HTC) since the Tax Reform Act of 1986.

SEC. 1 SHORT TITLE **"HISTORIC TAX CREDIT IMPROVEMENT ACT OF 2015"**

SEC. 2 INCREASING THE REHABILITATION CREDIT FOR CERTAIN SMALL PROJECTS

Creates a 30% credit for smaller deals to make sure the rural west and non-urban areas have the same ability to take advantage of the credit. This small deal credit would be capped at Qualified Rehabilitation Expenses of $2.5 million, changing the credit allowed from $500,000 to $750,000 on the largest projects. The definition of a small deal was reduced to $2.5 million in this version from $5 million in earlier versions.

SEC. 3 ALLOWANCE FOR THE TRANSFER OF CREDITS FOR CERTAIN SMALL PROJECTS

Allows the HTC, for small transactions with rehabilitation expenditures not over $2,500,000, to be transferred as a tax certificate, making these deals easier for small project owners.

SEC. 4 INCREASING THE TYPE OF BUILDINGS ELIGIBLE FOR REHABILITATION

Changes the definition of substantial rehabilitation. This provision would change the threshold to qualify for the credit of 50% of adjusted basis instead of 100% of adjusted basis as the program currently requires.

SEC. 5 REDUCING BASIS ADJUSTMENT

Changes the amount of the depreciable basis adjustment from 100 percent to 50 percent of the amount of the HTC. This would place the HTC in line with renewable energy and new market tax credits. The LIHTC has no depreciable basis adjustment.

SEC. 6 SPECIAL RULES FOR DISPOSITIONS OF STATE HISTORIC TAX CREDITS

Changes how the federal government taxes state historic tax credit proceeds.

SEC. 7. MODIFICATIONS REGARDING CERTAIN TAX-EXEMPT USE PROPERTY.

This provision would modify the disqualified lease rules to limit the definition of a "disqualified lease" to those leases that are part of a sale leaseback arrangement involving a nonprofit that has used the property before certification as a historic rehabilitation. The other types of disqualified leases that inhibit the rehabilitation of these buildings: those with purchase options, leases in excess of 20 years, and leases in buildings that use tax-exempt financing, would be eliminated.

SEC. 8 ELIMINATING FUNCTIONALLY RELATED PROPERTIES

Eliminates the concept of functionally related buildings. It allows an owner to obtain an unconditional Part 3 approval from the National Park Service for any set of buildings or parts of a building regardless of the future actions of another owner.

Preserving America's Heritage

IMPROVING PUBLIC INVOLVEMENT IN SECTION 106 REVIEWS
Office of Federal Agency Programs

Introduction. In passing the National Historic Preservation Act, Congress recognized that the preservation of the nation's irreplaceable heritage is in the public interest, and its historic foundations provide a sense of orientation to the American people. Recognizing that the preservation of this heritage is in the public interest, the ACHP has ensured that the Section 106 regulations include direction to agencies regarding public involvement. These requirements include, but are not limited to, Section 800.2(d), which establishes a public information standard. This provision establishes the general parameters that:

- The federal agency must notify the public of the undertaking, and provide them with sufficient information to allow meaningful comments, so they can express their views during the various stages and decision-making points of the Section 106 process;

- The agency must meaningfully consider the views of the public it receives and seek to accommodate them;

- Provisions for involving the public are flexible and can be tailored to other existing outreach efforts, including public notification procedures established pursuant to the National Environmental Policy Act. It remains up to the federal agency to implement an outreach program that reflects and balances various factors, including the nature and complexity of the undertaking and its impacts on historic properties, the likely interest of the public in historic preservation issues, any confidentiality concerns, and the nature of the federal involvement.

While for the most, part agencies carry out these provisions successfully, ACHP staff has noted there continues to be a consistent number of public inquiries and concerns expressed about Section 106 reviews, and some inconsistency in the way agencies inform the public about significant Section 106 milestones.

Discussion. The ACHP has generally encouraged agencies to examine their existing public outreach processes to ensure the standards set out above are met. Since many agencies also review projects under the public involvement provisions of the National Environmental Policy Act, agencies are explicitly encouraged to use this process so long as they provide adequate opportunities for public involvement.

The ACHP's advice in this regard has focused on the specific provisions of the regulations for public involvement. These include the following:

1. When the agency determines it has an undertaking subject to Section 106 review, it must consult with the appropriate SHPO/THPO and develop a "plan for involving the public in the Section 106 process."

2. When an agency makes a finding of "No historic properties affected" or if there is a disagreement over this finding, the regulations call for it to "notify all consulting parties … and make the documentation available for public inspection prior to approving the undertaking" (800.4(d)(1)).
3. The agency official must consider any views provided by the public in applying the criteria of adverse effect (800.5(a)), or make the documentation available to the public if there is a disagreement over a finding of "no adverse effect" (800.5(c)(2)(i) & 800.5(c)(3)(ii)(C)).
4. When the consulting parties consult to resolve adverse effects, the regulations call for the agency to provide an opportunity for the public to express their views on appropriate ways to avoid, reduce, or resolve adverse effects. This same level of public engagement is called for if there is a failure to resolve adverse effects, and the ACHP issues comments.
5. The Section 106 regulations also provide for public input when a federal agency is considering a program alternative (e.g., programmatic agreement, program comment, etc.) or when agencies substitute the NEPA process for their Section 106 review process.

ACHP staff has arranged for federal agency representatives to share with the committee an overview of their agency's general procedures and policies for involving the public, consistent with the above requirements, and offer their views on whether further advice or assistance from the ACHP would be helpful in fulfilling these responsibilities. Committee members will have the opportunity to discuss steps the ACHP might take.

Action Needed. Committee members will be asked to provide their views on appropriate public involvement, as well as recommendations to staff on whether the ACHP should takes steps to improve or make more consistent federal agency efforts to inform and involve the public.

March 9, 2016

Preserving America's Heritage

FIXING AMERICA'S SURFACE TRANSPORTATION ACT (FAST Act)
Office of Federal Agency Programs

Introduction. Following a lengthy period of negotiations on Surface Transportation legislation, Congress passed the Fixing America's Surface Transportation Act (FAST Act), which was signed into law by the President on December 4, 2015. This five-year, $305 billion surface transportation bill will increase spending on highway, transit, and rail programs, and establish efficiencies in the administration of new and existing programs. The ACHP circulated to its members in December a summary of the major provisions of the FAST Act, focusing on provisions that have implications for historic preservation and Section 106 of the National Historic Preservation Act (NHPA). (see attachment)

Since many of the provisions in the FAST Act will be coordinated by the Department of Transportation (DOT) modes, the ACHP has been meeting with the Office of the Secretary, Federal Railroad Administration (FRA), Federal Transit Administration (FTA), and the Federal Highway Administration (FHWA) regarding the requirements of the FAST Act. Likewise, the ACHP has encouraged DOT to facilitate meetings with other stakeholders, including the State Historic Preservation Officers (SHPOs), Indian tribes, and the National Trust for Historic Preservation (NTHP), to determine how they will participate in the implementation of the FAST Act.

Overview. Based on background information that has been shared by DOT, the following information outlines the provisions of the FAST Act in which ACHP involvement will be ongoing.

Section 1301: DOT must align the requirements of Section 4(f) with the requirements of NEPA and Section 106 in coordination with DOT, ACHP, and DOI.

Section 1302: Instructs DOT to incorporate "reference to past transportation environmental authorities" to include Section 4(f) and Section 106 requirements.

Section 1303: DOT must develop a Memorandum to FHWA and other modes exempting common post-1945 concrete or steel bridge or culverts from individual review under NHPA and Section 4(f).

Section 1304: Requires that during NEPA compliance, the lead agency for a highway project develop a checklist to help sponsors identify potential natural, cultural, and historic resources in the area of the project.

Section 1309: DOT must establish a pilot program in which states that already have assumed NEPA delegation authority may conduct environmental reviews and make approvals under state environmental laws instead of NEPA.

Section 1312: DOT **must** develop and issue guidance that expands the existing provisions on the use of federal funds for liaison positions, and to give permission to provide funding to federal

agencies, state agencies, and Indian tribes to support activities that improve permitting and review activities.

Section 1313: DOT must develop a series of improvements aimed at aligning the federal environmental review process for non- 23 U.S.C. 139 projects, including development of a coordinated and concurrent environmental review and permitting process for transportation projects with an EIS and developing an environmental checklist.

Section 1432: DOT must set forth protocol for emergency exceptions and expedited procedures for environmental permitting for any road, highway, railway, bridge, or transit facility that is damaged by a Stafford Act emergency, and that is in operation or under construction on the date on which the emergency occurred.

Section 11502: FRA must make improvements to, or the maintenance, rehabilitation, or operation of, railroad or trail transit lines that are in use or were historically used for the transportation of goods or passengers, and they shall not be considered a use of a historic site under Section 4(f), except for stations or bridges and tunnels located on railroads that have been abandoned and transit lines not in use.

Section 11504: DOT must submit a proposed exemption for railroad rights-of-way from under Section 106 (54 U.S.C. 306108), consistent with the exemption for interstate highways and that the ACHP issues a final exemption.

Section 41002: Non-transportation related portion of the FAST Act that addresses improving the permit process for major capital projects, including creating an interagency Permitting Improvement Council (PIC) that sets the parameters for other key activities of PIC.

Current Status. Committee members will hear from DOT regarding its plans for implementing those provisions of the FAST Act that have implications for historic preservation and Section 106 of the NHPA. As DOT carries out these provisions and develops a list of deliverables and a master schedule, the ACHP will assist where appropriate in sharing information with stakeholders. It is anticipated that the Office of the Secretary will continue to provide periodic updates via websites and the Administration's Rapid Response Team on Transportation regarding progress that has been made in improving project deliveries, environmental streamlining, and delegating state environmental and permitting programs.

Relationship to the ACHP's Strategic Plan. Advising DOT on the FAST Act fulfills the ACHP's current strategic plan at Section II: Improve federal agency programs to enhance the stewardship of the full range of historic properties and contribute to tribal, state, local, and private preservation efforts.

Action Items. None

Attachment: Historic Preservation and the FAST Act

March 9, 2016

Preserving America's Heritage

Historic Preservation and the FAST Act

On December 4, 2015, President Obama signed into law the Fixing America's Surface Transportation Act or FAST Act (Act), a 5-year, $305 billion surface transportation bill that boosts highway and transit spending. As summarized below, the Act includes a number of provisions with implications for historic preservation and the Section 106 review process.

Exemption of Railroad Rights-of-way from Section 106. Section 11504 of the Act directs the Department of Transportation (DOT) to submit to the ACHP a proposed exemption of railroad rights-of-way from Section 106 review. DOT must submit its proposal within one year of passage of the act, and the ACHP is required to issue a final exemption within 180 days of receiving DOT's proposal. The proposal and the final exemption are to be consistent with the exemption for the Interstate Highway System issued by the ACHP in 2005. Previous versions of this had proposed amending the language of Section 106 itself, to which the ACHP and our preservation partners raised objections. The conferees accepted our alternative to retain the exemption but to place it elsewhere within the bill.

Amendments to Section 4(f). The Act contains several amendments to the Section 4(f) review process for transportation projects. Under that process, DOT agencies may use ("use" is a different standard than "affect") historic sites only if there is no feasible and prudent alternative, and must undertake all possible planning to minimize harm to such sites.

- **Provision for NEPA and Section 106 Alignment and Substitution.** Section 1301 of the Act creates a new alternative path that DOT agencies may use in complying with Section 4(f). To set the stage for this new approach, the law places a general requirement on DOT to align, to the maximum extent practicable, the requirements of Section 4(f), Section 106, and the National Environmental Policy Act (NEPA). Within 90 days of the bill being signed into law, DOT is required to coordinate with the Department of the Interior (Interior) and the ACHP to establish procedures for achieving this alignment.

  The law then goes on to set forth the baseline parameters of a process (summarized below) whereby DOT may choose to use the NEPA and Section 106 processes to fulfill the requirements of Section 4(f) review.

  If DOT determines during the NEPA process that there is no feasible and prudent alternative to using an historic site, it may seek concurrence with that finding from the relevant State or tribal preservation officer(s), Interior, and the ACHP (if participating in the Section 106 review of the project). If DOT obtains the concurrence of the preservation officer(s), Interior, and the ACHP, then the NEPA determination is considered to satisfy the avoidance alternatives analysis requirements of Section 4(f).

If DOT is successful in completing the process outlined above, it may notify the relevant State or tribal preservation officer(s), Interior, and the ACHP that it plans to use the Section 106 consultation process to satisfy the Section 4(f) requirement to maximize planning to minimize harm to historic properties. Such substitution is fulfilled if the preservation officer(s), Interior, and the ACHP (if participating in the consultation) all execute a memorandum of agreement or programmatic agreement for the project under Section 106.

DOT has 90 days from the date of enactment (December 4, 2015) to develop procedures to implement the provision and is required to consult with the Department of the Interior and the ACHP on them. We have had an initial conference call on the subject and expect to be significantly involved in the process.

- **Exemption of Certain Bridges from Review.** Section 1303 exempts from Section 4(f) review those common post-1945 concrete or steel bridges or culverts that are not subject to individual review under Section 106 pursuant to a Program Comment issued by the ACHP in 2012.

- **Exemption of Many Rail and Transit Projects from Review.** Section 11502 effectively exempts the improvement, maintenance, rehabilitation, or operation of railroad or rail transit lines or elements from Section 4(f) review. The exemption does not apply to stations or to bridges and tunnels on abandoned rail lines or transit lines not in use. However, the exemption does apply to such bridges and tunnels when they are on lines that have been railbanked or where service has been discontinued.

Improving Federal Permitting. Title 41 is a non-transportation-related portion of the Act that addresses improving the permitting process for major capital projects. Section 41002 creates an interagency Federal Permitting Improvement Steering Council, and the ACHP is one of 13 named members of the council. This builds on and makes permanent the permitting streamlining initiative launched by the Obama Administration in 2012 under Executive Order 13604. The ACHP has been serving on the steering committee established under that executive order, which is the model for the newly created council. Title 41 also establishes new requirements for coordination and timing of environmental reviews for covered projects. While Section 106 is not specifically mentioned, ACHP staff are exploring to what extent Section 106 reviews will be affected by the new requirements.

Authorization for Funding for Federal and State Agencies, and Indian Tribes. Section 1312 permits entities receiving DOT funds to ask DOT for permission to give funds to federal agencies, state agencies, and Indian tribes to support activities that improve permitting and review activities, including planning, approval, and consultation processes. This broadens the previous funding authorization. Funds may be used for planning, environmental review, dedicated staffing, training, information gathering and mapping, and development of programmatic agreements. In the context of the Section 106 process, SHPOs and THPOs (and even the ACHP) potentially could receive funds to assist DOT in identification of and consideration of effects on historic properties.

Requirement for Development of Environmental Checklists. Section 1304(e) requires that during NEPA compliance the lead agency for a highway project develop a checklist to help project sponsors identify potential natural, cultural, and historic resources in the area of the project. One of the stated purposes of the checklist is to identify agencies and organizations that can provide information on such resources. Section 1313 also calls upon DOT to develop a checklist (within 90 days of enactment of the law) to help project sponsors identify potential natural, cultural, and historic resources in the areas of proposed projects.

Emergency Exemptions. In accordance with Section 1432, if a road, highway, railway, bridge, or transit facility is damaged by a declared emergency, reconstruction in the same location with the same capacity, dimensions, and design is eligible to be exempted from the requirements of Section 110 of the National Historic Preservation Act.

Creation of a New Nationally Significant Federal Lands and Tribal Projects Program. Section 1123 creates a new nationally significant Federal lands and tribal projects program for construction, reconstruction, or rehabilitation of nationally significant Federal lands and tribal transportation projects. This is based in large part on the previously introduced Save Our National Parks Transportation Act (H.R. 2595). One criterion to be considered during project selection is the extent to which the highway, road, bridge, trail, or transit system involved is listed on or eligible for the National Register. The original bill was filed after structural concerns led to lane closures and a load-limit reduction on the historic, NPS-owned Arlington Memorial Bridge in Washington, D.C. $100,000,000 is authorized for each of fiscal years 2016 through 2020.

Streamlining NEPA Compliance. The Act continues numerous revisions to existing DOT NEPA compliance requirements aimed at improving the efficiency of the process. Whether these will raise issues with coordinating NEPA and Section 106 compliance remains to be seen. One provision, however, potentially could have significant implications. Section 1309 requires DOT to create a pilot program for authorizing up to five states to use their own environmental laws in lieu of NEPA. In the short term, coordination of NEPA and Section 106 in the pilot states will need to be considered and addressed. In the long term, depending on its success, the program might be seen as a precedent for state assumption of other DOT environmental responsibilities, such as Section 106. The pilot program will sunset in 12 years.

January 13, 2016