

**BUREAU OF INDIAN AFFAIRS
AND
BUREAU OF INDIAN EDUCATION**



**EXECUTIVE ORDER 13287,
“PRESERVE AMERICA” SECTION 3
REPORT
SEPTEMBER 2008**

BUREAU OF INDIAN AFFAIRS
AND
BUREAU OF INDIAN EDUCATION

EXECUTIVE ORDER 13287, “PRESERVE AMERICA”
SECTION 3 REPORT, SEPTEMBER 2008

INTRODUCTION

This report is to provide the Chairman of the Advisory Council on Historic Preservation (ACHP) and the Secretary of the Interior the progress information the ACHP will need to meet its reporting requirements under Section 3 of Executive Order 13287 *Preserve America*. It assesses the current status of the Indian Affairs (IA)* inventory of historic properties, including the general condition and management needs of such properties, steps underway or planned to meet these management needs and the suitability of such properties to contribute to community economic development initiatives, including heritage tourism. The report also assesses the IA regulations, management policies and operating procedures for compliance with Sections 110 and 111 of the National Historic Preservation Act (NHPA).

** Since the last reporting period, a new bureau, the Bureau of Indian Education (BIE) has been established out of what was formerly the Office of Indian Education within the Bureau of Indian Affairs (BIA). Both bureaus are under the Assistant Secretary – Indian Affairs, hence federally-owned properties used by either bureau are under the overall ownership and control of IA.*

It is important to note before proceeding what constitutes IA ownership of historic properties. IA holds over 50 million acres of Indian land in trust. This status, however, does not confer IA ownership or control over historic properties on those lands. Such properties remain the personal property of the Indian landowner. IA may not exercise any management authority, such as by fencing an archeological site or prohibiting the demolition of a historic house, over these historic properties.

IA holds a much smaller amount of federal land for its own use. Historic properties on such lands are owned and subject to management by IA. IA-owned historic properties, then, are buildings structures or objects listed on the IA Real Property Inventory (Inventory), or sites located on IA-held federal land. This report addresses those historic properties.

To help assure the comparability of IA information with that from other reporting agencies, the following is presented in the manner of responses to a questionnaire, using the major and subset questions in the ACHP’s revised Advisory Guidelines Implementing Executive Order 13287, “Preserve America” Section 3: Reporting Progress on the Identification, Protection, and Use of Federal Historic Properties.

IDENTIFICATION

1. Building upon previous Section 3 reports, please explain how many historic properties have been identified and evaluated by your agency in the past three years? Has your inventory improved? Please explain.

The past three years have been a period of organizing, and then reorganizing our approach to identifying IA-owned historic properties. As a first step, we identified approximately 1700 buildings and structures on our inventory that, according to age listed, were 45 years old or older. We then established a timetable (during which the 45 to 49 year old buildings would reach the 50 year minimum for National Register eligibility) and plan whereby BIA cultural resources personnel in each IA region would do the following:

- Rule out, either through photographs or site visits, those properties they believed were clearly not eligible for the National Register of Historic Places.
- Identify those properties that had already been listed in, or formally determined eligible for listing in the National Register.
- Make site visits to all properties that did not fall into one of the above categories, take photographs, send these to the respective State or Tribal Historic Preservation Officer (HPO) and consult with these to determine whether or not the property was eligible for the National Register.
- During site visits, judge the condition of properties.

This approach did not succeed as intended, for the following reasons.

- Unilateral decisions about properties' being ineligible for the National Register are not formal determinations without HPO concurrence, hence would not be valid in a case where an undertaking affecting the property was subject to compliance with section 106 of NHPA. This meant that site visits (in most cases) and HPO consultation on eligibility, would be required for all of the 1700 properties meeting or nearing the minimum age criterion.
- The documentary information HPOs would need to make eligibility determinations is greater than we had originally anticipated. Photographs and age and use information about properties would not be sufficient.
- All of the BIA cultural resources personnel in the IA regions are archeologists. Most do not have the expertise to assess the potential architectural or engineering significance of a property, or the ready knowledge to evaluate its significance in a historic context. They would not, therefore, be prepared in most cases to assemble the type of field and documentary information an HPO would likely need in order to make eligibility determinations.
- The 1700 properties are concentrated in just 4 of 12 IA regions, thus creating a disproportionate workload for those regions.
- The workload created by having to obtain eligibility determinations on all 1700 properties, by having to provide HPOs extensive background documentation on properties, and by the uneven distribution of these properties among the IA regions was too great to perform using BIA cultural resources personnel. This was exacerbated by the fact that these personnel lack the expertise to assemble the types of documentation HPOs might require to evaluate certain property types. It was

further exacerbated by the fact that some of the information in the IA inventory is not usable for property evaluation purposes as it is presented. For example, the age listed for a property is the date it was acquired by IA, not its actual construction date; and the condition listing – good, fair, poor – is based on cost and depreciation factors, not structural soundness.

The effort did, however, yield some positive results. We identified 140 buildings and structures that had already been listed or formally determined eligible for inclusion in the National Register, among which is the 11-building Haskell Indian Nations University National Historic (District) Landmark. This number (140) constitutes the current base upon which we are cumulatively building our identification of historic buildings and structures.

We have now changed from an in-house to a contract approach to completing this identification. We have contracts underway in three of the four regions of high property concentration, with plans to initiate one in the fourth of these regions in 2009. Meanwhile, we are consolidating information supplied by the eight regions where the number of historic buildings and structures was either nil, or low enough to be identified by in-house personnel. We expect to have our identification of historic buildings and structures completed by the next E.O. 13287, Section 3 reporting period.

With regard to archeological sites, IA owns relatively little federal land, much of which is in use and on which we have determined there are no archeological sites. All of the sites we have identified to date, numbering 51, are located in Arizona on land controlled by the BIA's San Carlos Irrigation Project (SCIP). These were identified by contractors reporting to the BIA. All of the 51 sites have been determined eligible for the National Register. We expect this number to increase somewhat over the next three years as survey and reporting continues for the SCIP property.

2. Describe your agency policies that promote and/or influence the identification and evaluation of historic properties.

IA's identification of historic properties is driven by requirements in the Chief Financial Officer's Act of 1990, section 110 of the National Historic Preservation Act of 1966, as amended, and Executive Order 13287, Preserve America, of March 3, 2003. In addition, IA is subject to the Department of the Interior's Strategic Plan, which has goals for the percentages of archeological sites and historic structures in good condition. IA shares these goals as reportable items under the Government Performance Reporting Act (GPRA). Ongoing property identification is necessary in order to meet these reporting requirements.

IA does not have a historic preservation program per-se as a part of its mission. The identification of historic properties relates to our mission through compliance with section 106 of NHPA as we carry out mission activities. Our policy for the stewardship of historic properties is that prescribed in existing statutes, regulations and guidelines, such as section 110 of NHPA and standards and guidelines issued by the Secretary of the Interior. We classify heritage assets as properties (building, sites, etc.) on or eligible for inclusion in the National Register of Historic Places and as museum property. These follow the classification used by the Department of the Interior. A discussion of IA's property definitions may be found in the Introduction of this report.

3. How has your agency established goals for the identification and evaluation of historic properties including whether they have been met?

IA has established GPRA performance measures for measuring progress in the identification of historic properties. We are currently starting from a base of 140 historic structures and 51 archeological sites. We establish annual target estimates for identifying additional historic structures, which is relatively easy since we are dealing with a known quantity of structures that are potentially eligible for the National Register. We have not set targets for adding to the number of archeological sites identified, as we cannot know how many sites might be discovered, do not have comprehensive, agency-wide archeological survey ongoing and do not expect there to be a large number of sites on IA-owned land. The benchmarks established by the annual target estimates will lead to better management of IA's historic properties.

4. Describe any internal reporting requirements your agency may have for the identification and evaluation of historic properties, including collections (museum and archeological).

IA reports under GPRA on historic properties (historic structures, archeological sites) we have identified. Identification includes evaluation as to National Register eligibility and physical condition assessment. IA also has a GPRA reporting item for museum property (which include archeological collections) and its physical condition.

5. Explain how your agency has employed the use of partnerships to assist in the identification and evaluation of historic properties.

Except for its small number of archeological sites, IA historic properties are largely its operational structures, such as administrative buildings, schools, living quarters and roads shops. Formal partnerships have not been, nor do we see any need for them to be, a factor in the identification and evaluation of these properties. We do, of course, have the opportunity to benefit occasionally from expertise or assistance within the Indian tribes we serve, especially those with tribal historic preservation programs.

6. Provide specific examples of major challenges, successes, and/or opportunities your agency has experienced in identifying historic properties over the past three years.

The challenges and successes we experienced over the past three years are covered in the discussion under item #1 above.

PROTECTION

7. Explain how your agency has protected historic properties.

The primary vehicle through which IA has protected its historic properties is section 106 of NHPA, where there are proposed undertakings, such as demolition, that might affect such properties. Otherwise, buildings and structures are subject to normal maintenance which, as they are identified as historic, will take their historic qualities into account. We have not to date undertaken to enhance the condition of a property simply because it is historic.

8. Describe your agency policies that promote and/or influence the protection of historic properties.

Identification enhances protection, and the Department of the Interior's Strategic Plan aims for all of the historic properties identified to be in good condition. Beyond that, IA has issued the following document to its Office of Facilities Management and Construction (OFMC).

REQUIREMENTS FOR THE PROTECTION AND TREATMENT OF HISTORIC PROPERTIES UNDER SECTION 110

- A. Section 110, paragraph (a)(1) of the subject Act requires Federal agencies to use, to the maximum extent feasible, historic properties available to the agency before acquiring, constructing or leasing any other buildings for its use. The agency must also undertake appropriate preservation measures to make the use of such historic properties possible.*
 - 1. Prior to acquiring, constructing or leasing any building, the responsible Facilities Management office must prepare written justification for not using a historic property available to the BIA. This justification is not required, however, where a building to be acquired or leased is itself a historic property. Such properties may be considered to be available to the BIA, and should be actively sought out for use in cases where no historic properties are available under BIA ownership.*
 - 2. Justifications should at least consider the suitability of the locations of available historic properties for the intended use, the structural condition of those properties, and the cost of using one of those properties versus that of acquiring, constructing or leasing another building. They should also take into account applicable guidelines in the Secretary's Section 110 Guidelines.*
- B. Section 110, paragraph (b) requires, where a historic property will be demolished or substantially altered by Federal or Federally assisted action, that the responsible Federal agency assure that timely steps are taken to make, or have made appropriate records for deposit in the Library of Congress.*
 - 1. For this purpose, appropriate records means recording to HABS/HAER (Historic American Buildings Survey/Historic American Engineering Record) standards.*
 - 2. Such records must be submitted to the Chief, Historic American Buildings Survey/Historic American Engineering Record, National Park Service, Washington, DC 20013-7127, for processing and transmittal to the Library of Congress.*
- C. Section 106 of the subject act requires Federal agencies to take into account the effect their undertakings might have on historic properties, and to afford the*

Advisory Council on Historic Preservation an opportunity to comment. The procedures for doing these are at 36 CFR 800.

1. While construction of a new building is not likely to physically damage or alter a historic building or structure, the procedures in 36 CFR 800 must, nevertheless, be followed when the new construction is located near a historic building or structure. Particular attention should be given in such cases to the visual effect the new construction might have on the historic property, and to the effect changing traffic patterns, noise and other factors might have on its sense of place.

2. The procedures in 36 CFR 800 must also be followed where there is a chance that new, or any construction might affect an archeological site, a site important to Indian traditional history, or some other not readily visible historic property.

3. The procedures must likewise be followed when renovating a historic property for reuse. This benefits the property by helping to assure that the renovation is compatible with the property. It should not be viewed as an impediment to reuse. Compatible renovation can usually be accomplished at a cost, including code compliance, comparable to or less than new construction.

D. As provided in Section 110, paragraph (g), costs under A. - C. above, or for any other preservation activities under the subject Act may be included as eligible project costs in all BIA or BIA assisted undertakings.

In addition, OFMC has just issued a procedural memorandum, in coordination with the BIA, spelling out who is responsible for what in complying with section 106 of NHPA on construction projects. This same guidance will be directly applicable to maintenance and disposal activities, as well. IA's asset management plan also contains provisions for compliance with section 106 when proposed undertakings might affect a historic property. We do not at this time, however, have provisions in our deferred maintenance program that address historic properties.

9. Explain how your agency has employed the use of partnerships to assist in the protection of historic properties.

As noted in #5 above, IA historic properties are largely operational structures. Partnerships have not been a factor in the protection of these properties. We do have the opportunity to benefit occasionally from expertise or assistance within the Indian tribes we serve, especially those with tribal historic preservation programs.

10. Provide specific examples of major challenges, successes, and/or opportunities your agency has experienced in protecting historic properties over the past three years.

The main challenge has come from lack of clarity among OFMC personnel and BIA cultural resources personnel as to roles and responsibilities in complying with section 106 of NHPA. There have been instances where demolition occurred without proper compliance with section 106. The procedural memorandum referred to in #8 above should help prevent future such occurrences.

USE

11. Explain how your agency has used historic properties.

IA historic properties are largely operational facilities. Some, however, are unoccupied for structural reasons. We have no current plans for restoring any of these to usable condition. Properties that are structurally sound, but no longer needed by IA, are most often transferred to Indian tribes. A tribe may occasionally make use of such a property for heritage tourism. IA, however, has not engaged in using historic properties for heritage tourism, and is far more likely to transfer a historic property to a tribe than to itself use it for that purpose.

12. Explain the overall condition of the historic properties within your agency's control.

IA buildings and structures are subject to a maintenance and condition assessment schedule that, as yet, does not distinguish historic from non-historic properties. As the identification of historic properties proceeds, we will be able to match property with condition assessment. At this time, we know that 45% (and probably considerably more) of our 140 identified historic structures and 90% of our identified archeological sites are in good or better condition.

As noted in #7 above, IA has not to date undertaken to enhance the condition of a property simply because it is historic. Since all the properties we own are intended for use in support of our mission, it is in our best interest to maintain them in usable condition. The condition of historic properties may thus be improved, but not because they are historic.

13. Describe your agency policies that promote and/or influence the use of its historic properties.

IA has no agency-specific policies that directly address the use of historic properties. We have disseminated the policies in section 110 of NHPA (see #8 above). Many properties that either have been, or are likely to be identified as historic are, in fact, currently in use. Their historic status, however, has little bearing on their use. It is their structural condition, and IA has no policy for restoring buildings or structures to usable condition because of their historic status. Unusable buildings and structures are either restored or demolished according to cost factors, or are transferred to Indian tribes.

14. Explain how your agency has used Section 111 (16 U.S.C. § 470h-3) of NHPA in the protection of historic properties.

While there are no impediments to using the authority, IA does not currently have policies or operating procedures in place for complying with section 111 of NHPA. IA does not adhere to any other federal regulations or authorities in lieu of section 111 when transferring or disposing of its historic properties. Indian tribes do, however, have priority rights under certain circumstances to property earmarked for transfer

15. Explain how your agency has employed the use of partnerships to assist in the use of historic properties.

As noted in #5 and #9 above, IA historic properties are largely operational structures. Partnerships have not been a factor in the use of these properties. We do have the opportunity to benefit occasionally from expertise or assistance within the Indian tribes we serve, especially those with tribal historic preservation programs.

16. Provide specific examples of major challenges, successes, and/or opportunities your agency has experienced in using historic properties over the past three years.

IA has had some issues in two areas in regard to the use of historic properties. First, there have been some differences of opinion with HPOs over whether the cost of rehabilitation and re-use versus the cost of demolition truly warranted demolition, with perhaps too great a leaning on the part of IA towards demolition. More Central Office and, perhaps, ACHP involvement in such cases might help resolve such disputes and lead to a more consistent and comprehensible approach.

Second, there has been some public misunderstanding as to IA's role in determining the treatment of historic properties that have, outside of IA's discretionary authority, been transferred to Indian tribes. Tribes sometimes demolish such properties, and IA is perceived as having allowed it to happen. We need to communicate better to the public that IA does not have discretionary authority over all activity on Indian trust land.

Other than the above challenges, IA is actively using many of its historic properties to carry out its mission.