



Preserving America's Heritage

MINUTES
SPRING BUSINESS MEETING
ADVISORY COUNCIL ON HISTORIC PRESERVATION
APRIL 4, 2019
WASHINGTON, D.C.

MEETING
ADVISORY COUNCIL ON HISTORIC PRESERVATION
Kennedy Caucus Room, Russell Senate Office Building
Washington, D.C.
April 4, 2019

PROVISIONAL AGENDA

Call to Order 8:30 a.m.

- I. Chairman's Welcome
- II. Transition to Full-Time ACHP Chairman
 - A. Transition Process
 - B. Strategic Plan Development
- III. Section 106 Issues
 - A. Digital Information Task Force Proceedings
 - B. Reflections on Development of Chairman's Comment Letter on Growler Case
 - C. National Park Service Proposed Rule on National Register Nominations
- IV. Historic Preservation Policy and Programs
 - A. White House Opportunity and Revitalization Council and the ACHP
 - B. Traditional Knowledge and the National Historic Preservation Program
 - C. Section 106 Success Stories: Future Directions
- V. Committee Reports
- VI. New Business
- VII. Adjourn

IN ATTENDANCE

Milford Wayne Donaldson, Chairman
Leonard Forsman, Vice Chairman
Terry Guen
Luis Hoyos
Dorothy Lippert
Robert Stanton
Jordan Tannenbaum
Brad White

Architect of the Capitol

Christine Merdon
Acting Architect of the Capitol

Secretary of Agriculture

Represented by:
Dan Jirón
Acting Deputy Under
Secretary

Secretary of Defense

Represented by:
Maureen Sullivan
Deputy Assistant
Secretary of Defense
(Environment, Safety &
Occupational Health)

Administrator, General Services Administration

Represented by:
Beth Savage
Director, Center for
Historic Buildings,
Public Buildings
Service

Secretary of Homeland Security

Represented by:
Teresa Pohlman
Executive Director,
Sustainability and
Environmental
Programs

Secretary of Housing and Urban Development

Represented by:
Danielle Schopp
Director, Office of
Environment and
Energy

Secretary of the Interior

Represented by:
Ryan Hambleton
Deputy Assistant
Secretary for Fish and
Wildlife and Parks

Secretary of Transportation

Represented by:
Barbara McCann
Director, Office of
Policy Development,
Strategic Planning, and
Performance

Native American/Native Hawaiian Member

Reno Keoni Franklin
Chairman Emeritus, Kashia
Band of Pomo Indians

President, National Conference of State Historic
Preservation Officers

Mark Wolfe
Texas State Historic
Preservation Officer

General Chairman, National Association of Tribal Historic
Preservation Officers

Shasta Gaughen
Pala Band of Mission Indians
Tribal Historic Preservation
Officer

Chair, National Trust for Historic Preservation

Represented by:
Elizabeth Merritt
Deputy General
Counsel

OBSERVERS

Managing Director, Council on Environmental Quality

Represented by:
Ted Boling
Associate Director for
NEPA

Chair, National Alliance of Preservation Commissions

Represented by:
Stephanie Paul
Program Director

President, ACHP Foundation

Katherine Slick
Historic Preservation Consultant

In attendance and participating in the meeting were ACHP Executive Director John M. Fowler and Reid Nelson, Director, Office of Federal Agency Programs.

PROCEEDINGS

Chairman's Welcome

Advisory Council on Historic Preservation (ACHP) Chairman Milford Wayne Donaldson opened the spring business meeting at 8:30 a.m. He asked Leonard Forsman to lead the Pledge of Allegiance. The agenda was adopted. Chairman Donaldson appointed Shayla Shrieves recorder of the meeting. The minutes from the October business meeting were adopted with a move from Brad White and second from Beth Savage. Christine Merdon welcomed everyone to the Capitol campus and provided members with background information about the Kennedy Caucus Room. Chairman Donaldson welcomed former ACHP Member Ann Pritzlaff and Professor Michael Tomlan with students from Cornell University who were visiting. There are no proxies for this meeting. The members introduced themselves around the table.

Katherine Slick gave a report on the work completed under the Cultural Resource Fund regarding the money that came from the Positive Train Control resolution. The Fund gave 470 grants including 196 to tribal nations and 41 states.

John Fowler gave a staffing update. Jaime Loichinger is the new assistant director of the Federal Permitting, Licensing, and Assistance Section of the Office of Federal Agency Programs (OFAP). Bill Marzella is the new Bureau of Land Management (BLM) Liaison. Alexis Clark has joined the staff full time after serving as an intern last summer.

Chairman Donaldson discussed the transition to a full-time ACHP chairman. The full-time chairman is a Presidential appointee and has to be confirmed by the US Senate. Aimee Jorjani had a confirmation hearing last year, and her nomination came out of the committee favorably in May. Her nomination, along with about 270 others, was not acted upon in the last Congress. She was renominated by the President on January 16, and was being considered by the Senate Committee on Energy and Natural Resources this morning. (Later on in the meeting it was announced that the Committee reported her out favorably again, and her nomination moves to the full Senate for final action.)

Executive Committee

Chairman Donaldson said last summer he established a transition working group to coordinate transition efforts. Council members had several issues and discussions on how they want to formalize the Executive Committee.

Mr. White said today's discussion will inform recommendations for Ms. Jorjani when she assumes the position of chairman. The ACHP currently has an Executive Committee, an informal advisory body to the chairman in the absence of the full membership. It provides input from a small group of members, primarily in the preparation for ACHP meetings. It currently includes the chairmen of the standing committees. Members were surveyed last year, and the results of those surveys showed overwhelming consensus on the Executive Committee to be more formalized.

Any modifications would likely require some changes to the Operating Procedures. Mr. White said members endorsed the idea that membership would not necessarily just be standing committee chairmen but would include rotating membership on the Executive Committee, so there is participation throughout others' terms of their office. It would not replace the full membership but might take action, if necessary, during an interim period.

Terry Guen said she supports this idea but wanted to know more about the primary purpose of the committee to provide guidance to the chairman and the executive director during periods when the full membership is not convened. She asked if there is an example.

Mr. White said there are times where the Committee has made recommendations to the chairman to write a letter to take some action. Mr. Fowler said the Committee might serve as a vetting process for a letter that might need a quick review. There may be occasions that come up where the ACHP needs to act in a short time period. For example, the executive director gets legislative referrals from the Office of Management and Budget (OMB), and they have a three-day turnaround. Having a full-time chairman will make it more expeditious for the ACHP to respond, but the Executive Committee might weigh in to bring broader views to the membership on the issue.

There could be times where the membership directs the chairman, in consultation with the Executive Committee, or delegates some authority in a specific case to the Executive Committee. If it was formalized, the Committee would not have a standing authority to act on behalf of the membership but could act when delegated on a particular issue.

Mr. Fowler said it could become a way that the membership can express more opinions and direction on actions that might otherwise be taken by the chairman, the executive director, or the staff.

Jordan Tannenbaum said at the United States Holocaust Memorial Museum, the executive committee meets bi-monthly. He said it is an effective way to get business done quickly and efficiently. Their findings and decisions are presented to the full council, which meets twice a year. He asked about the term of a rotating member at large.

Mr. Fowler said it is useful to continue to have the committee chairmen engaged, but then to bring in somebody else as a fresh voice every now and then.

Maureen Sullivan said because there are no federal agencies who are committee chairmen at this point, she wanted to insist that no decision be made unless there is a federal agency representative as part of the Executive Committee. She said it is only fair, given the preponderance of federal agencies that are members of the full ACHP, that the federal agency views be part of that decision making.

Chairman Donaldson agreed. Mr. White said he hoped a more formal Executive Committee would be able to include a federal agency head. Mr. Fowler recounted how there was a time when the ACHP had a regular federal member on the Executive Committee. It fell into disuse because he could not get policy-level representation.

Vice Chairman Forsman said there would be an advantage to having a federal employee on the Executive Committee because they have information that can be helpful to the ACHP. He added that members should define the idea further and give some examples of the types of things this committee would do.

Strategic Plan

Chairman Donaldson said the ACHP is required to prepare a multiyear plan under the Government Performance and Results Modernization Act. It needs to be done with the full-time chairman, but members have been discussing the general directions for a new plan. He added that he liked having the sequential committee meetings and suggested it would be a good model for the future.

Mr. White said the Preservation Initiatives Committee talked about the accomplishments over the past six or seven years of the strategic plan. Based on the discussion, the Committee recommends exploring the following priorities as the ACHP moves forward with strategic planning. These include identifying new sources and expanding existing sources of financial support; continuing to expand legislative activities seeking more proactive engagement with Congress; continuing to expand the focus on climate resilience and adaptation; expand ACHP involvement in some international preservation efforts; continuing to expand the internship program and maximize its organizational efficiency; and seek involvement in planning for the 250th anniversary of the United States in 2026.

Reno Franklin said the Native American Affairs Committee had tribal leadership at their meeting: Governor Tim Menchego of Santa Ana Pueblo, who offered words of encouragement and advice which Mr. Franklin took into account going through the recommendations.

He pointed out that there was only one tribal priority in the previous strategic plan, and there is need for having more than one in this upcoming strategic plan. The first suggestion offered by numerous people was to revise the regulations. This would allow a more strategic approach to tribal and Native Hawaiian participation in the process. Mr. Franklin said Governor Menchego told the committee that nothing will change until tribal and religious leaders have the ability to make recommendations and not just participate in consultation.

Next, Mr. Franklin suggested making the success of the ACHP and Salish Kootenai Tribal College partnership a priority. It has been a fruitful relationship thus far, and he would like to expand on it.

The goal of that project is to train Tribal Historic Preservation Officers (THPOs) at a tribal college. As a part of that, there was a recommendation to include a Native youth in the committee. The previous day they had a presentation from Victor Lopez-Carmen, ACHP staffer Guy Lopez's son, who recently edited a book *Global Indigenous Youth: Through Their Eyes*. He did worldwide research, interviewing and going to many different countries offering perspectives from Native youth or Indigenous youth.

Mr. Franklin said the committee wants to expand the ACHP training program to include cultural resource management (CRM) firms and practitioners. That is something that has come up numerous times when there are agencies working with CRM firms, sometimes the way they consult with tribes could be more effective.

He also said they want to get more into Indian Country. Governor Menchego invited the ACHP to New Mexico to sit down with his people and the other 19 or so Pueblo Tribes and talk to them on their lands. Mr. Franklin suggested making it a priority to get out more often and visit tribal partners.

Mr. Tannenbaum said the Federal Agency Programs (FAP) Committee members acknowledged that the ACHP has accomplished a great deal under the current plan and particularly under long range goals two and three. This includes fairly routine but important tasks related to participating in Section 106 consultations, the development of Section 106 guidance and program alternatives, but also important policy and program issues, like maintaining active participation in the Permitting Council and Broadband Workgroup as well as the One Federal Decision MOU and the Unified Federal Review Process.

He said there was also support for continuing to carry out the ACHP's role under the Preserve America Executive Order and further work on the historic preservation implications of climate change. The development of program alternatives for important forest management needs and issues, continued guidance and assistance to agencies on complying with the One Federal Decision, the recognition of the importance of traditional knowledge and effective tribal consultation, more work on integrating NEPA and Section 106 reviews.

Further, the committee suggested the strategic plan give advice on complying with Section 110 requirements, perhaps in coordination with the National Park Service (NPS), further support for communication between Federal Preservation Officers (FPOs) and State Historic Preservation Officers (SHPOs), as well as better communication among all Section 106 stakeholders.

It is advised to utilize the presence of a full-time chairman to tackle long-standing Section 106 policy issues, and leveraging partnerships to expand the influence of the ACHP and teach the public more about what the ACHP does and its accomplishments.

Robert Stanton said the Communications, Education, and Outreach (CEO) Committee met and discussed the importance of utilizing the wide array of news and electronic media to convey to the widest spectrum of the American public possible, the importance of citizen engagement in historic preservation. He said through a number of surveys and special studies that there still is not a full appreciation throughout the breadth of the American population on the importance of respecting and preserving the collective heritage. He said the committee proposes to continue to utilize all resources available to get the word out, and follow through on the goal of diversifying the preservation movement.

An important element of that whole effort is to emphasize the importance of engaging youth. The committee discussed a program that was inaugurated last year and which he said was "poetry in motion."

It was a major partnership between NPS, the National Trust for Historic Preservation, Morgan State University, and the ACHP, where six outstanding students participated in "Touching History: Preservation in Practice."

Mr. Stanton said the program encouraged them to take another look at their career goals and perhaps some of them will be sitting around this table within the next six years demonstrating that they had made a commitment to pursuing a career in historic preservation.

According to the strategic plan, he said youth involvement is one of the key components of diversifying the preservation movement. This year will involve Morgan State and Tuskegee University in Alabama. One of the major considerations that came out of the discussion is whether to continue to develop this program. He noted the committee endorsed its continuation but also suggested developing the program to the extent that it could become replicated—involving other colleges and universities that have significant enrollment of minority students.

The committee wants to maximize the use of today's technology, listening to youth in terms of whether the ACHP is communicating effectively with them, and be open to constructive input from them in terms of how their federal government is or is not serving them in terms of sharing what the opportunities are about their engagement.

Ms. Guen said she was impressed by the format of having the four committee meetings sequentially. She was interested in something Governor Menchego said that the discussion is about traditional knowledge or traditional ecological knowledge. His opinion was that Section 106 was formulated to protect the past but not so much the future. For his needs, there must be a living space. She suggested that this wisdom applies to all peoples. Looking at resilience and all these other issues, that will be an ongoing issue.

Mr. Fowler said the committees and meeting structure can change. When the new chairman comes in, the opportunity exists for the membership talk with the chairman about the best way to structure the operations of the ACHP. He said a challenge is that so much of the work gets done in committees, but the agency representatives at the committees are not the agency representatives sitting at the business meeting table. In order to get the federal agency input from the policy level, it is a challenge that needs to be considered.

He said at the July business meeting he might include a day or a half day set aside for strategic planning. Mr. Tannenbaum suggested serving lunch at the committee meetings, or inviting someone in to speak at that point, like an agency representative or a subject matter expert.

Digital Information Task Force

Chairman Donaldson said the task force includes the Departments of the Interior and Transportation, National Alliance of Preservation Commissions (NAPC), National Conference of State Historic Preservation Officers, National Association of Tribal Historic Preservation Officers, Council on Environment Quality, the National Trust, and Expert Member Dorothy Lippert.

Mr. Tannenbaum gave an overview. The group has met twice and has spent time assessing the broad body of work already out there on digitization of information, about historic properties, and has given further thought to a proper role for the ACHP in this broad endeavor.

Recognizing the ACHP's oversight role for the Section 106 process, they agreed the central focus ought to address the need to ensure that consistent information about historic properties is electronically available to agencies and other planners to inform the Section 106 review process. The task force intends to call upon the expertise of a number of other stakeholders who have been working on different parts of this broader puzzle by inviting them to serve on a workgroup that advises on these efforts and is planning to convene them in person in a meeting in May. After the task force hears from them, they will further refine goals and establish more specific expectations and deliverables to convey findings and advice on the issue.

The committee reminded everyone that tribal information needs to be protected, as does any sensitive information about historic properties. Information made electronically available to federal agencies and project planners should not be used as a substitute for consultation with tribes, or anyone else. The task force needs to remain cognizant of the work already done by NPS and the federal data standards work groups, and not repeat those efforts.

One goal should be ensuring that information about historic properties is made available to and utilized by planners at the earliest possible stages of planning and decision making. The task force needs to consider how the ACHP might make the case, whether to the Administration, the Hill, or industry, that investments in the further development of such systems would be wise. They asked how it will be funded.

Reflections on the Development of the Chairman's Letter on the Growler Case

Chairman Donaldson said it was complicated trying to get the letter out. Besides the 45-day time limit in the regulations, it also happened during the 35-day federal government shutdown. He developed a system where staff was sent to conduct a public meeting in Washington. Then a chairman's letter was drafted, which is one of the ways that the ACHP is allowed to fulfill its formal responsibilities.

Usually, when there has been a termination of a Section 106 case, Chairman Donaldson would send a group of council members to a public hearing. That panel normally consists of two federal agency members and three members that are appointed by the President. The timing this time did not make the panel option viable.

Mr. Tannenbaum said the process worked well. This is a model as to how to proceed in situations where there is a termination of consultation. He asked Reid Nelson to come to the table and report on the process and the recommendations. Mr. Nelson said it was a very good letter, and it was much improved because of council member input. The 45-day period means that staff has a relatively short amount of time to pull together formal comments to the head of a federal agency that try to capture the collective views of the ACHP members about cases that sometimes have been going on for years and have been complicated throughout their life cycle. Staff is proposing a protocol on how to use essentially the same process going forward in the future to develop these letters. He summarized the protocol from the meeting book.

Mr. Franklin said he thought the process was effective, giving members an opportunity to include things in the chairman's comments and chairman's letter. Mr. White said he would like to know how the determination is made of what is included, or what topics can or cannot be addressed. He noted members are not involved in the day-to-day work of Section 106 consultation and do not know what took place from the beginning of a consultation until the termination.

Mr. Fowler said with a full-time chairman, the ACHP will have policy-level leadership in the office on a daily basis, and so the chairman is going to be more intimately involved in the development of staff positions on controversial cases. He said it could be a fairly dramatic change, and it also gets back to thinking about the role of the Executive Committee, and the question of communication between the chairman and the membership. Mr. White agreed and stressed communication with the members will be important in developing these policy-level positions.

Chairman Donaldson said maybe something was missed in the process on how the Area of Potential Effects (APE) was determined in the Growler case. There were controversial comments from several people saying something in one way and then changing their mind. He acknowledged it can get complicated. Mr. Stanton asked how the letter is shared publically, for example, disclosed to the media or to the public in general. Chairman Donaldson said it goes on the ACHP website and is public information at that time. Mr. Fowler said it is public as soon as the letter is delivered to the agency head. At that point, he shares it with the council membership, consulting parties, and the media.

Ms. Guen endorsed the benefits of a public meeting. She said there is a lot of benefit to the community when the ACHP shows up. They can see that members are present and that this process included them as a backup, as a face to face. People really want to be heard.

Mr. Nelson noted that Tom McCulloch and Katharine Kerr interacted with the public in Washington. They had tremendous feedback from the public there. He acknowledged the ACHP received a large body of feedback electronically as well. Staff efforts through the media informed people of the opportunity to comment and resulted in a lot of things coming in via email.

Mr. Fowler said customarily, within the 45-day regulatory limit, there is a public meeting. One thing he welcomes in this protocol is having a council member present at the public meeting, so it shows the community that the ACHP has made the commitment of involving policy-level leadership in hearing what the public has to say.

Elizabeth Merritt said the National Trust appreciated the chairman's responsiveness to the comments that were submitted. She warned about the possibility of a case where there may be a consensus before the public meeting between the SHPO, the agency, and the ACHP about issues such as the APE. Then the public may disagree. Some of those previous "handshake" deals might need to be called into question, as a result of being responsive to the public feedback.

She said over the years, the ACHP comments in these rare termination cases have often made an enormous difference and been extremely influential. Here, however, it is her understanding that the ACHP received a letter back from the Secretary of Defense acknowledging the comments but determining that the undertaking would go forward as planned. She suggested it would be useful to think about how to handle situations like that.

With regard to the scope of ACHP comments, Mr. Fowler said the membership can comment on anything it wants to. This is an advisory comment. It is a tool that can be used for a variety of purposes. With the APE issue in the Growler case, there had been a lengthy, arduous debate in the consultation process about what the APE was. In the end, the agency is entitled under the regulations to make the final determination on the APE. At the same time, there is no legal constraint on the ACHP members commenting on that determination. It gets down to what the ACHP wants to say.

National Park Service Proposed Rule on National Register Nominations

Chairman Donaldson said NPS recently issued a proposed rule that would implement provisions in legislation enacted in 2016 that revised the process for federal agency nominations of their historic properties to the National Register. The proposed rule would affect the determination of eligibility process. It has raised a variety of concerns in the preservation community.

Ryan Hambleton said the reason for taking this action stems primarily from the 2016 amendments to the NHPA, which required NPS to make implementing regulations for the legislative provisions. The proposed rule hinges entirely on that law. He read a portion of the legislation, noting this requires that the Secretary of the Interior may accept the nomination directly by a federal agency for inclusion of a property on the National Register only if one of six different conditions is met. He wanted to hear thoughts on the interpretation and noted the comment period on the proposed regulatory changes ends on April 30.

He added that other proposed changes deal with the desire of NPS and the Department of the Interior (DOI) to attempt to protect private property rights, by ensuring that if an entity or person owns a majority of the land area of a historic district that is up for nomination that they have a say in whether their property is listed there.

Mark Wolfe said the National Conference of State Historic Preservation Officers has serious concerns about the proposed language, which he feels goes far beyond the statutory language that was cited. It deprives citizens and the SHPOs from participation in what is a very important segment of the national preservation program. It creates a system that favors the opinions of people who own more land. In other words, the votes of people of comparative wealth and government entities that are land-holding entities are now going to be worth more than the votes of other property owners and residents in that district.

He found that ironic, given that the national preservation program is making the effort to make sure that the National Register really represents all of the people of the nation. He said this works in the opposite direction. Also, the process that is proposed is really unworkable from the SHPO perspective. For example, SHPO capacity differs from state to state in terms of resources and ability to determine the square footage of every lot in a proposed National Register Historic District.

Mr. Franklin said he respectfully disagrees with the decision to make a determination that this rulemaking does not have an effect on American Indian tribes, tribal governments, and Native Hawaiians. He asked Mr. Hambleton to revisit the decision. There are thousands of sacred sites, cultural sites, and archaeological sites of traditional cultural importance to tribes throughout public lands, state parks, and national parks. Any one of those would be affected by the decision. He said Executive Order 13175 clearly states that federal agencies will consult Indian tribes on decisions that affect them.

Luis Hoyos noted that he sits on the State Historical Commission in California and said, from his perspective, the National Register rules have been robust, very reliable, and reasonably understood by the public. Every time there is a conflicted situation with a property owner, once they are reminded of the rules, or once the rules are explained to them in a public setting in the Commission meetings, most of them walk away satisfied that the rules give them a chance to deny a listing if they disagree and so the determination stands. Most of them walk away satisfied.

He said he is concerned and alarmed at the nature of the proposed regulatory changes, the exceptions that these rule changes bring. He said these rules are aggressive and that they erode the authority of state commissions. Their determinations and their decisions might be summarily set aside by people who did not participate in the process. He said the current rules work more than reasonably well; they are fair. Property rights are amply protected. He said he cannot help but think that many of the proposed changes are just unnecessary.

Ms. Guen said her work with underserved groups led her to think the National Register still serves as a gateway of very high distinction. The Boston Chinatown community that she worked with on a nomination was not in favor of it initially because they had so little experience with historic preservation. But they understood the high bar to reach in a nomination. To have the bar pushed further away in some situations is not going to benefit the nation. The potential of that occurring grows by adding these rules. The current rules certainly seem to be functioning well and some communities are just starting to engage; there is a potential for the proposed changes to exclude some communities that are already struggling just to meet the current standards.

By the appearances of this discussion, probably those financially entitled will have more votes than those who are less represented. She said the extra rule changes are not needed.

Ms. Sullivan said she is concerned about the Department of the Interior's determination that DOI did not need to go through the Office of Information and Regulatory Affairs process for an interagency review. She said the woefully inadequate estimate that this would not have significant impact on federal agencies is off the mark. She wholly encouraged DOI to revisit that decision when they go to the final rule and respect the Executive Order 12866 process that has been established for a long time. She will also raise this issue with OMB-OIRA.

Dorothy Lippert noted regarding land ownership that Native Americans have been here since time immemorial. Over the last 500 years there has been a process of transference of land away from Native communities. She is concerned that by weighting the process toward landowners, this is going to be one more thing that is a detriment to tribal nations and tribal sovereignty.

Ms. Merritt raised several questions and ambiguities that she has been hearing discussed frequently: If there are historic districts that include federal and non-federal ownership, such as federal checkerboard ownership in the west or Main Street historic districts where there is a post office and courthouse, and then a lot of other private property, can the federal agency block those nominations? Can they block eligibility determinations? How does the SHPO calculate the denominator of ownership in order to determine whether a majority of landowners by acreage object when there is that kind of mixed ownership?

She said there has also been a lot of concern that in the Section 106 consultation process, if there is a disagreement between the federal agency, the SHPO, and other consulting parties about whether a property or a district is eligible for the National Register, that the federal agency could essentially block that disagreement from getting resolved, and thwart the Section 106 consultation process. Also, these regulations could interfere with the use of the historic tax credits by blocking, for example, Main Street historic districts from being listed on the National Register if a federal agency owning a property in the district objects.

Shasta Gaughen said the sovereign tribal governments are not being consulted in an appropriate fashion on this proposed rule. She said the idea that this rule change is not going to have an effect on tribal historic properties is “in the twilight zone.” She encouraged DOI to reconsider the level of consultation they are undertaking, but not just provide for more public comment, because tribes and tribal governments are not the public, they are sovereign nations.

Government-to-government consultation is necessary for tribes to fully be able to engage with NPS on the implications of this rule on tribal sovereignty, on tribal cultural properties, on the responsibilities of THPOs, and, also, for the tribes that may not have THPOs, but have the same level of concern and the same right to be consulted.

She asked Mr. Hambleton to consider having a longer process, so the tribes can have an appropriate venue to voice these concerns. Every other historic preservation organization is more easily able to define their area of concern, but for tribes, it is the entire country.

Mr. Tannenbaum said he has been involved with the Section 106 process for almost 50 years, and the regulations have changed a bit over time. He has been involved in many cases where things have hit a wall early in the process, and the ability to have either the SHPO or the agency go to the Keeper for a determination of eligibility is important. Having that objective review has been able to move these Section 106 cases through the process and arrive at decisions that are beneficial to both parties. He serves on a local commission and mentioned a current case where if this were the rule in effect, the status of a particular potential National Register-eligible district probably would not be determined. That would cause the whole process to go off the rails.

He also teaches Section 106 courses for the Department of Defense and said he can give a list of cases where the ability to trigger a determination of eligibility under Section 800.4(c)(2) of the Section 106 regulations has been very important in keeping things moving.

Ms. Slick said the first threshold of eligibility or listing is really key to what tiers off a number of other activities. Those activities have been designed to be consultative in spirit. She said it seems that this

approach sets up something that becomes adversarial, and she does not think that is needed or wanted in preserving the nation's history.

Mr. White questioned what consistent challenges DOI is trying to address with these proposed regulations. He said the ACHP would be happy to help them address those challenges in a way that is consistent with the spirit of the Act and the regulations as they have evolved thus far.

Ted Boling reiterated the importance of the Executive Order 12866 process. It is an opportunity for DOI to get candid input from its fellow federal agencies. It is an essential part of the way the government does rule-making, so he looks forward to working with DOI on that. The Council on Environmental Quality obviously has a vital interest in the NEPA and Section 106 processes working well together and federal agencies working well together.

Chairman Donaldson said it is important to understand how the program got here in the first place. He noted that the large infrastructure programs in the Eisenhower era, especially with the freeway interchanges and pipelines and transmission lines that were so important after the war led to the creation of the National Historic Preservation Act. That put an obligation on federal agencies. If they are going to take action or spend money, they must take into consideration these particular properties that are unique to the history of America, which goes well beyond issues of property ownership.

These properties that are on the National Register set the bar, and from that has been a trickle-down system from state registers to local registers to city registers. He said it is important to understand that where an owner subdivides his property into 1,000 trust units and names himself trustee for each unit so he has 1,000 votes to object to the listing of a historic district is just wrong. It is wrong for a lot of different reasons and should be addressed.

It is important to look at why the Act was created and what it has achieved over 50 years. He said the ACHP has a lot of experience that should be relied upon.

Mr. Hambleton said he appreciated the comments, and he understands and admires the passion that everyone on the ACHP has for historic preservation, and understands the strong feeling about this proposed rule. He has learned a lot and heard a lot since this rule was first proposed about a month ago, and he said he looks forward to seeing what everyone submits. On the issue of consultation in the meantime, he will take those comments back to NPS. He appreciated the offers of assistance in resolving some of the issues.

Ms. Sullivan asked if the ACHP members could review the ACHP comments before they get officially submitted to NPS. She cautioned that if they are speaking on behalf of the ACHP, then the ACHP members should have the opportunity to review the final comments. She said Executive Order 12866 requires if there is a significant rule that it go to OMB and the Office of Information and Regulatory Affairs to have that review shared among the federal agencies and reviewed by OMB for analysis in consistency to ensure that all the federal agencies are speaking with one voice prior to it going out to a public release. These conversations are usually very fruitful. It allows the ability to engage all the experts in the federal government, their thoughts and expertise.

Mr. Boling said there are some thresholds as to whether a rule is considered significant. It is applied to things like the Navy tinkering with their categorical exclusions. It is not necessarily limited to rules that have an impact of \$100 million or more on the national economy; it also addresses rules that are of policy significance or are of a more open-ended basis.

Mr. Fowler said the discussion was incredibly valuable for the development of the ACHP's comments, and to get a sense of members' concerns. He directed members to material in the meeting book to see

what the initial thinking was, which was to focus on the intersection between the Section 106 regulations and how the DOE process might be changed. Staff also had raised concerns about tribal consultation and the interagency coordination.

He said this regulation was identified as being under consideration almost a year ago, and there is a process whereby proposed regulations are put in an online database that the Office of Information and Regulatory Affairs maintains. He reached out early on to NPS and DOI expressing the ACHP's desire to coordinate with them, first to get an understanding of what the scope of the rule might be. He saw that if the rule changes were to address determinations of eligibility, there needed to be some serious consideration of how these things fit together with the Section 106 process.

Mr. Fowler said the ACHP did not get a response. He went to his contacts at OMB and asked for insight, and they could not get information on what was going on. In the end, not long before it was issued, he received a verbal summary from the budget examiner on what the scope was going to be, but not much in the way of content. He said the ACHP made every effort it could at the staff level to encourage early coordination on this. He will be developing the comments and will share a draft comment letter with members.

White House Opportunity and Revitalization Council and the ACHP

Chairman Donaldson said in December 2018, the President issued Executive Order 13853 which established the White House Opportunity and Revitalization Council. The mandate of this new council is to promote the revitalization of urban and economically distressed communities, particularly opportunity zones that are eligible for new opportunity zone tax benefits created in last year's tax overhaul.

The council could provide an excellent venue for the ACHP to advocate for historic preservation as a strategy for urban revitalization. The federal tax credits have had success in promoting community revitalization, affordable housing, and creating jobs. Given the ACHP's history and interest in this issue, he sent a letter to the secretary of HUD asking that the ACHP become a member of the opportunity council. He has not received a response yet from HUD.

Danielle Schopp said HUD is considering bringing the ACHP to the table and was very encouraging and welcoming about the idea of having the ACHP there. She appreciates the engagement that has happened so far and will continue.

She gave a brief overview of opportunity zones. The idea is to encourage public-private investment in distressed communities for economic development and offer capital gains tax relief to investors who invest in qualified opportunity zones. A qualified opportunity zone is a geographic area that has been designated by the Secretary of the Treasury. Opportunity zones are areas around the country where the poverty rate is 20 percent or higher, or the median income is less than 80 percent of that of the surrounding area. Opportunity zones can be in both urban and rural areas.

Governors can nominate up to 25 percent of eligible low-income communities' census tracts as opportunity zones. Then the Treasury Department qualifies these. They are geographically mapped and are eligible for this private investment that gives investors capital gains tax relief.

When a taxpayer sells an asset and realizes capital gains, they are subject to capital gains tax. Investors may put these gains in an opportunity fund established for investing in properties in opportunity zones, thus deferring tax on those gains and reducing the eventual rate by which they will be taxed. Investors have to put their capital gain in a qualifying opportunity fund within 180 days of the day the gain is received. The Treasury Department is estimating that over the course of opportunity zones, there will be \$100 billion invested. The concept is to unleash people's capital gains and focus them to lift up these

depressed areas. These opportunity funds can be paired with low-income housing tax credits, new market tax credits, and historic tax credits for additional benefits.

An important thing to know about the opportunity zone program is that it is not subject to NEPA or the Section 106 processes. HUD sees that coming into play through aligning federal resources and in layering in other federal programs.

Mr. White asked if all properties within an opportunity zone are exempted from Section 106 consultation, or whether the opportunity zone itself does not trigger Section 106. Ms. Schopp clarified that creation of the zone itself does not trigger Section 106.

Traditional Knowledge in the National Historic Preservation Program

Chairman Donaldson said traditional knowledge can be thought of as knowledge and practices of indigenous peoples, and often is employed in the programs conducted under the National Historic Preservation Act. The ACHP has long recognized traditional knowledge as an important factor in evaluating and understanding the significance of traditional cultural properties important to indigenous people. The agency has had this understanding for quite a long time. But as new members come in, they probably do not have the same level as the people that are going out, in terms of understanding and appreciation of traditional knowledge.

Vice Chairman Forsman said the importance of the beliefs, oral histories, and traditions that are connected to the landscape of American Indian people in this nation is so crucial to the preservation of the country. He considers it true patriotism to respect the traditions of American Indian tribes and their elders. It is a very important part of the cultural landscape. He stressed the importance of native language. Those words in that language are so crucially a part of the landscape that each of the tribes across the nation has, and it is all intertwined.

Vice Chairman Forsman said it is important that traditional knowledge be treated as just as important as the archaeological sites or the natural formations that are part of creation stories and other things, and that people remember to preserve and protect those as treasures of this country.

Mr. Franklin said he was conflicted at the committee meeting in understanding Pueblo culture and Pueblo rules and then asking a Pueblo governor to speak on a very sacred subject in a room full of people who may or may not be privy to hearing the information that he shared. He understood the weight of that decision and said he was fortunate that Native American Affairs Office Director Valerie Hauser also understood that. When one talks about traditional knowledge, it is not just the archaeological site, but it is how the information in itself is obtained. The roundhouse leader is responsible to everybody in a tribal community with teaching protocols like the ones that he followed and observed yesterday.

Those protocols in themselves are a piece of the overall traditional knowledge that Native Americans follow and hand down and ask others to observe. The task in front of both the Office of Native American Affairs and the Native American Affairs Committee is to find a medium that allows agencies and cultural resource management practitioners to gain insight and knowledge into how to gain access to that traditional knowledge from tribal leaders and tribal cultural authorities. That is not a simple task.

The committee said this needs to happen, but it should not be guidance, because to provide that kind of guidance in itself would be inappropriate, but to be more informative at the onset, and teaching from the perspective of the ACHP being a partner with tribes through informative papers and opportunities to learn.

The committee said they are looking to fill that gap between what the Environmental Protection Agency is calling traditional ecological knowledge, which many tribes concur with, and what the historic preservation community is calling traditional knowledge, and helping to explain that, in that space, one does not exist without the other. They are indeed very similar, if not, the same thing.

Mr. Franklin said he will provide in the coming meetings an informative paper that explains this and also some more testimony. The goal of the presentation of traditional knowledge is to teach, to inform, to bridge gaps, and to provide opportunities to expedite processes that are duplicative of each other.

Dr. Lippert said one of the things that was important to her to speak about in the meeting the previous day is the importance of acknowledging tribal experts. As Mr. Franklin noted, there are old Indians and there are elders, and they are not always the same person. Tribes acknowledge people who have traditional knowledge, and respect those people and defer to them because they have gained this wisdom over the years, and they know how to do things in the correct way.

In her job in the Repatriation Office at the National Museum of Natural History, they have practices where they defer to the tribes on things like sacred objects, because the museum cannot identify sacred objects. Most of the people in her office are not tribal members, so people do not have expertise on what the meaning of objects are and how they relate to a tribal community. She said tribal members come in and explain to staff that a certain object is sacred and they need it back for ceremonies. Staff are required to defer to that expertise when that happens.

It is important to respect the people who hold this knowledge. Just because something has been written down by a western scientist, does not make it traditional knowledge. Something written in a book is not necessarily the thing to rely on. Listening to people in the communities is the best practice.

Ms. Gaughen said western science and western ways of knowledge-making tend to focus on categories and taxonomies. That is not really a traditional way of defining what things are. If these are put into words and are defined in ways that do not have flexibility, that actually makes things harder for tribes. This happens when it comes to sharing the knowledge that they often do not want to share, but have to share in the service of saving what is most important, because the West does not acknowledge that these tribal definitions are as significant as they are.

She said she sees the need for ACHP information papers but also understands the fact that these are confidential types of ideas. They are sacred ideas, and there are currently 573 federally recognized tribes, and thus that many potentially different ways of defining traditional knowledge. As the ACHP proceeds on this attempt to define traditional knowledge, it must do what it can to listen more to those practitioners with that firsthand experience.

Ms. Slick said it is important to bring the awareness of tribal knowledge forward and create an opportunity for that information to be shared. She said it is going to take a lot of time and a major commitment on the agency's part to building relationships, because that information does not come easily. The relationship building becomes a foundation for how it will be presented and how to accept it.

Mr. Stanton said the Native American Affairs Committee provided a very moving experience. He said one of the most noble characteristics that defines one's humanity is to establish respect for others. The other one is to accept people's differences. He said he hopes that as the ACHP proceeds in advancing the preservation of the nation's rich and diverse natural and cultural heritage, that respect for one another and our differences will continue to grow as well.

He suggested there be other opportunities to have more interaction with others, including governors, mayors, tribal leaders, and leaders from the Latino community, the African American, Asian communities. There is, he said, no substitute for personal interaction.

Mr. Tannenbaum reminded members that in the US, Native Americans, through the boarding school process, were forbidden to speak their traditional languages. He felt the significance of Governor Menchego being able to join the committee meeting and speak to members in his own language. He said it is good to remember how important language is. Chairman Donaldson continued that it was not only speaking, but the clothes, the hairstyle, the mannerisms, and everything else. He has been told often by tribal members, "If you lose a language, you lose a culture."

Ms. Guen agreed that the live spoken language embodies a culture. Having grown up in a bilingual community, but barely being bilingual, she said she understands it, going into her own home and half the literature is in Chinese and she is not capable of reading fluently half of it. She said it is important for each new generation to push to continue with the language and teach the children; it is core to the identity. She suggested part of the strategic planning for the ACHP would be to consider always having on staff somebody who has ecological training, whether it be landscape architecture or other types of land management interpretation.

Mr. Franklin said the ACHP is trying to bridge that gap to help agencies and practitioners understand how to go about getting traditional knowledge from a tribe, and where to incorporate that into the process.

Section 106 Success Stories and Future Directions

Chairman Donaldson thanked Ms. Shrieves for doing all the editing and production on the stories, and Ms. Slick for coming up with the original concept of this. He announced there are now 106 published success stories, and he was pleased that the goal was finally reached. He suggested starting a new series of 110 Section 110 stories.

Mr. Stanton reported that the stories have been widely used at conferences, congressional visits, and training. He has used them extensively in a wide range of speaking engagements to diverse audiences. These are extremely effective tools of conveying in a succinct way the good work on the part of the ACHP in the interest of the American public in preserving heritage. These are effective tools with which to communicate both the letter and spirit of the National Historic Preservation Act.

Chairman Donaldson said the compendium of stories will be put together soon, and the stories themselves are useful when he goes to meet with legislators on the Hill or their home offices; it is great to bring those in, because they really love to see that.

Ms. Slick said although she is not eager to start the 110 project, she thought it would be interesting to showcase successful agencies that stepped forward and met their Section 110 responsibility. She said there is an ongoing need to talk about the successes that agencies do writ large, and to capture those as they become both educational, but also celebratory about the work that is going on.

Mr. Tannenbaum suggested another series of success stories focused on the NEPA-Section 106 substitution process, because people usually have a lot of questions about that process.

Mr. Fowler commended Ms. Shrieves noting she was more than an editor, she was the enforcer who got people to turn in stories on time, and she was adamant about having one from every state. He also thanked all the staff members who contributed to drafting these stories even though his editing may have frustrated them. He asked members to think about how they might be able to use these within their agency

or organization to educate people on the Section 106 process and how it can come out with good solutions.

Chairman Donaldson noted the stories involve many different partners. They also reach across great areas. One of the reasons the series is so successful is that Section 106 is really and always has been a partnership relationship.

Barbara McCann said she was pleased to see the latest batch of stories had four related to transportation, and there certainly have been quite a number related to transportation issues. She was thinking about what they could do in DOT to use all of those. She said there is a tendency of people in agencies to look at these processes as a hassle, and to really show how the dispute process results in positive outcomes is so valuable. Using it to send that message, and these processes can have good outcomes is helpful.

Ms. Savage said the series is a really valuable thing, and they have used it in-house at the General Services Administration in various ways. She said it is great that they are all online, but she hoped staff could look at the website and figure out potential ways to make them more accessible.

Mr. Fowler said it would be useful for him to hear how agencies or other members are using the stories to share. He is interested to work with NAPC to see how to use these to raise the level of understanding for the local preservation commissions and local preservationists. Stephanie Paul said she has shared stories quite a bit with her members. The members enjoy reading them, and they have worked on some of the projects.

Members discussed having links in the stories to other issues or programs. Mr. Fowler said as one goes through the lists of consulting parties, there are community groups and groups that have interests that one does not think of as being historic preservation, but there has been an intersection with what the ACHP does and what they do.

Committee Reports

Mr. Stanton said he touched upon the Historically Black Colleges and Universities (HBCU) initiative in the strategic plan discussion. Today, there are 105 fully accredited HBCUs. The ACHP will be continuing this program working with the White House Initiative for Historically Black Colleges and Universities and with Morgan State University, the National Trust, and NPS. This year the ACHP will be including Tuskegee University, in Tuskegee, Alabama. He hopes to continue to involve other colleges that have significant minority populations, again, broadening the circle of the face of America in this noble endeavor of historic preservation.

Mr. Fowler recognized the partners who have made this possible. He thanked Susan Glimcher and the OCEO staff for coming up with this idea in the first place, and then carrying it through. NPS has provided the funding and the experiential opportunity at the Western Training Center at Grand Teton.

He thanked Joy Beasley who has been an outstanding partner from NPS, as well as the HOPE Crew program at the National Trust that has been an integral part of this. The ACHP Foundation has provided its assistance in building the partnership, getting the resources out to the participants, and providing wise counsel on how to move forward. It is a great interagency public-private partnership that he really looks forward to continuing.

Mr. Tannenbaum said for the FAP Committee, they noted last year, the ACHP approved two Program Comments (PCs): DOT Program Comment on rail rights-of-way, and the VA Program Comment on vacant and underutilized properties.

Mr. Nelson came back to the table and said there has been significant progress in implementing both of those items. Regarding the PC to VA, issued on October 19, 2018, the ACHP recently received a list of properties that they have determined should be subject to the PC, 391 properties in all. His staff will be working expeditiously to inform preservation and veterans organizations about that list, and put it on the website, so that the appropriate stakeholders will have the opportunity to weigh in on that. It was an important part of the process that was built into the PC.

For the Department of Transportation PC, issued August 17, 2018, there were two parts of that. One was an exemptions part, which has been used about 106 times, principally by Amtrak. There was also a property component. One of the things the PC required was that the Department of Transportation, in consultation with the ACHP, issued guidance on how to implement that part of the PC within about nine months. He has had a number of productive meetings with the Department of Transportation recently to provide some initial comments on that draft guidance.

Mr. White thanked Dru Null and her staff for the work that they do for the Office of Preservation Initiatives and for the committee. He also congratulated her on her first meeting as the new director of the Office of Preservation Initiatives.

He said the committee is continuing to be guided by the legislative agenda approved by the ACHP members for the previous Congress, pending confirmation of the new chairman. For the FY2019 appropriations that were passed in February, the preservation program received \$102.66 million, which is the largest appropriation it has had in the history of the program. The preservation partners have an aggressive, optimistic budget proposal FY2020 which would total \$140 million.

He noted that the John Dingell Jr. Conservation, Management, and Recreation Act was passed in February with many important conservation elements. These include permanent reauthorization of the Land and Water Conservation Fund, reauthorization of the HBCU preservation grant program, and creation of the Golden Spike National Historical Park. There were six new national heritage areas that were designated, as well as five new national monuments.

New Business

Chairman Donaldson noted there is no new business at this time. Regarding ACHP meetings in 2019, he has a schedule set up in consultation with Ms. Jorjani. The summer meeting will be July 9-10. The fall meeting will be November 6-7. Right now, they are all scheduled for Washington, D.C., although he always recommends that the ACHP get out of the city.

He thanked the staff, and also said he would like to continue encouraging the new chairman, as well as the rest of the members, to work with the White House in getting a more diverse membership on the ACHP. He has built a council to try to represent the full story of the heritage of America. He said he hopes that initiative continues in the White House. The meeting adjourned at noon with a motion from Vice Chairman Forsman and second by Mr. Franklin.