



Preserving America's Heritage

ADVISORY COUNCIL ON HISTORIC PRESERVATION SUMMER BUSINESS MEETING

WASHINGTON, D.C.
JULY 9-10, 2019

ADVISORY COUNCIL ON HISTORIC PRESERVATION

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Preserving America's Heritage

TABLE OF CONTENTS
Summer Business Meeting

Provisional Agenda

Annotated Agenda

Draft Operating Procedures Amendments to Formalize the ACHP's Executive Committee

Attachment: Proposed Draft Amendments to the ACHP Operating Procedures to Formalize its Executive Committee

Digital Information Task Force

Attachment: Digital Information Task Force Meeting notes

GAO Report: "Tribal Consultation: Additional Federal Actions Needed for Infrastructure Projects"

Section 106 Status Updates

ACHP Legislative Agenda: Proposed ACHP Action

Chaco Cultural Heritage Area Protection Act

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Preserving America's Heritage

**MEETING
ADVISORY COUNCIL ON HISTORIC PRESERVATION
Smithsonian Castle
Washington, D.C.
July 10, 2019**

PROVISIONAL AGENDA

Call to Order 8:45 a.m.

- I. Chairman's Welcome
- II. Chairman's Award for Achievement in Historic Preservation
- III. Transition to Full-Time ACHP Chairman
 - A. Transition Process
 - B. ACHP Executive Committee
- IV. Section 106 Issues
 - A. Digital Information Task Force Proceedings
 - B. National Park Service Proposed Rule on National Register Nominations
 - C. Federal Communications Commission Program Comment for "Twilight Towers"
 - D. Government Accountability Office Report "Tribal Consultation: Additional Federal Actions Needed for Infrastructure Projects"
 - E. Update on Prior Section 106 Issues
- V. Historic Preservation Policy and Programs
 - A. White House Opportunity and Revitalization Council and the ACHP
 - B. Legislation
 - C. Planning for the Semiquincentennial
- VI. Committee Reports
- VII. New Business
- VIII. Adjourn

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MEETING
ADVISORY COUNCIL ON HISTORIC PRESERVATION
ANNOTATED AGENDA

- I. Chairman's Welcome
- II. Chairman's Award for Achievement in Historic Preservation. *Chairman Wayne Donaldson will present the award to NASA for the restoration of the Apollo Mission Control Center.*
- III. Transition to Full-Time ACHP Chairman. *Chairman Donaldson will update members on the status of the confirmation of a new full-time ACHP chairman.*
 - A. Transition Process. *Transition Working Group Chairman Brad White will report on steps that have been taken to advance transition planning. Discussion only, no formal action.*
 - B. ACHP Executive Committee. *General Counsel Javier Marques will present proposed Operating Procedure amendments to implement the members' prior direction on formalizing the Executive Committee. Discussion only, no formal action.*
- IV. Section 106 Issues
 - A. Digital Information Task Force Proceedings. *Federal Agency Program Committee and Task Force Chairman Jordan Tannenbaum will report on the work of the Task Force and invite member comments. Possible action on intermediate recommendations.*
 - B. National Park Service Proposed Rule on National Register Nominations. *Executive Director John Fowler will update members on the status of the proposed rule. No formal action needed.*
 - C. Federal Communications Commission Program Comment for "Twilight Towers." *Office of Federal Agency Programs Director Reid Nelson will update members on the FCC's plans for addressing the issue of Section 106 compliance for the "Twilight Towers." Discussion only, no formal action.*
 - D. Government Accountability Office Report "Tribal Consultation: Additional Federal Actions Needed for Infrastructure Projects." *Anne-Marie Fennell, Director, Natural Resources and Environment team from GAO, will brief members on the report and its recommendations. Chairman Donaldson will lead a discussion on actions that members might deem appropriate for the ACHP to take to further the goals of the report. Discussion only, no formal action.*
 - E. Update on Prior Section 106 Issues. *Mr. Nelson will report on recent developments on the Providence Viaduct termination and ACHP comment and the Railroad Right-of-Way Program Comment. Discussion only, no formal action.*

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V. Historic Preservation Policy and Programs

A. White House Opportunity and Revitalization Council and the ACHP. *Office of Preservation Initiatives Director Dru Null will update members on this White House council. Members will have the opportunity to discuss the potential contributions of the ACHP to this initiative. No formal action needed.*

B. Legislation. *Preservation Initiatives Committee Chairman Brad White will report on several bills in Congress of interest to the ACHP. These include funding for National Parks' deferred maintenance, Historic Tax Credit, National Heritage Areas, the American Battlefield Act, and the African American Burial Ground Act. Depending on the status of the legislative process, members may be asked to take positions on the legislation. Otherwise, no formal action needed.*

C. Planning for the Semiquincentennial. *Cathy Gillespie from the U.S. Semiquincentennial Commission will brief members on the plans for the 250th anniversary of the Declaration of Independence in 2026. Members will have the opportunity to discuss how historic preservation and the ACHP should fit into the initiative. No formal action needed.*

VI. Committee Reports. *The committee chairmen will report briefly on any additional items discussed during committee meetings that warrant member attention. No formal action needed.*

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

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



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DRAFT OPERATING PROCEDURES AMENDMENTS TO FORMALIZE THE ACHP'S EXECUTIVE COMMITTEE

Introduction. At the last business meeting, the members discussed the idea of formalizing the Executive Committee. That discussion was preceded and informed by a survey about various matters related to transitioning to a full-time chairman situation.

Taking into account the results of the survey and the mentioned discussion, the staff has drafted the attached amendments to the Operating Procedures.

The draft amendments set up the membership of the committee, the scope of its authorities, and its reporting requirements. The membership would be composed of the ACHP chairman and vice chairman, the chairmen of the standing committees, and a federal agency. The federal agency member would change every two calendar years. The authorities would encompass providing advice to the chairman regarding the coordination of meetings, legislative positions that, due to timing, preclude the preliminary approval by the full membership (consistent with the already existing provisions about legislative positions), and other authorities already held by the chairman. As with other subgroups, the Executive Committee may also be authorized to act on behalf of the full membership as provided by a vote of a majority of the membership. Finally, the amendments would require that the chairman brief the Executive Committee at least once between regular business meetings with regard to the day-to-day activities of the agency. They would also require the Executive Committee to provide a concise report of such briefings to the full membership.

Action Needed. Since the members have agreed that formal action on these amendments should await the entry on duty of the new chairman, at this point the members should determine if the structure, authorities, and obligations are appropriate for inclusion in an amendment to the Operating Procedures. Consistent with the direction of the members, the chairman will modify the current configuration of the Executive Committee for operation in the near term. Formal, permanent changes will await the advent of the full-time chairman.

As a reminder, amendments to the Operating Procedures like this one require a two-thirds majority vote of the full membership to pass (16 or more affirmative votes). So, attempting to work out any disagreements as much as possible before final presentation to the membership is particularly important and would benefit from identifying any concerns at the time of the meeting.

Attachment: Proposed Draft Amendments to the ACHP Operating Procedures to Formalize its Executive Committee

June 25, 2019

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Proposed Draft Amendments to the ACHP Operating Procedures
to Formalize its Executive Committee
(June 4, 2019)

... E. Council Subgroups

1. Subgroups: The Chairman may establish standing and ad hoc subgroups to carry out the Council's business. The Chairman shall appoint to such subgroups a chairman and subgroup members who may be chosen from the Membership or may be others. The participation of subgroup members who are not selected from the Membership shall be governed by Section II.D.3 of these operating procedures. At his or her discretion, the Chairman may substitute any subgroup member or chairman and may terminate the subgroup. Unless given a specific delegation of authority by majority vote of the Membership, the powers of subgroups shall be limited to advising the Chairman and the Membership on the exercise of their legal authorities. Federal agency Members, the Architect of the Capitol, the Governor, the Mayor, the Chairman of the National Trust for Historic Preservation, the President of the National Conference of State Historic Preservation Officers, and the General Chairman of the National Association of Tribal Historic Preservation Officers, or their designees, may name alternate representatives to participate in subgroup functions, including making motions, seconding motions, and voting, when the subgroup is carrying out those limited advisory functions. The Member or designee should notify the chairman of the subgroup in writing when naming such alternates. Subgroups established under this section shall generally adhere to these operating procedures and to Robert's Rules of Order.

2. Executive Committee: There shall be a standing subgroup named the Executive Committee.

a. Composition: The Executive Committee shall be composed of the following members:

i. the Chairman;

ii. the Vice Chairman;

iii. the chairs of standing subgroups (committees); and

iv. one federal agency member designated by the Chairman. This Executive Committee seat will rotate among the Council's federal agency members, each with a two year term.

b. Observers: The Executive Director will be an observer in Executive Committee meetings. The Chairman, at his or her discretion, may invite other Council

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1. the Department of the Interior;
2. the Department of Agriculture

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- Deleted: 3. the General Services Administration (or the agency that replaces it in the Council);
4. the Department of Defense (or the agency that replaces it in the Council);
 5. the Department of Transportation (or the agency that replaces it in the Council);
 6. the Department of Homeland Security (or the agency that replaces it in the Council);
 7. the Department of Housing and Urban Development (or the agency that replaces it in the Council);
 8. the Department of Veterans Affairs (or the agency that replaces it in the Council); and
 9. the Department of Education (or the agency that replaces it in the Council);

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members, observers, or staff to participate as observers to Executive Committee meetings.

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c. Authorities: The Executive Committee is authorized to:

i. advise the Chairman on how to coordinate the presentation of issues and reports at Council meetings;

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ii. advise the Chairman as to how to carry out his or her already existing authorities;

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iii. be the appropriate subgroup that the Chairman and the Executive Director will consult in those situations where the need for timely action precludes formal approval of policy and positions on legislative proposals by the Membership, per Section VII.A.; and

iv. carry out any other authorities under a specific delegation of authority given to it by a majority vote of the Membership.

c. Reporting: At least once between Council regular session meetings, the Chairman will meet with the Executive Committee, by phone and/or in person, every two months to brief it regarding Council operations. Within 10 days after such a briefing, the Executive Committee will provide a concise written report of the briefing to all Council members.

[For reference, here are the current legislative provisions, cross-referenced in the proposed amendments:

VII. LEGISLATIVE MATTERS

A. Formulation of Policy and Positions

Policy and positions on legislative proposals shall be established by action of the Membership. In those situations where the need for timely action precludes formal approval by the Membership, the Chairman and the Executive Director may establish and convey as appropriate an interim position by consulting with the Membership or an appropriate subgroup. The Chairman or the Executive Director shall notify the Membership when such action is to be taken, invite the views of members on the issue, and report to the Membership on any legislative positions taken or testimony delivered in a timely manner. The Membership shall be provided an opportunity to ratify or revise that interim position at the next meeting of the Membership. In the event a Member questions the consistency of a proposed interim legislative position with Administration

policy, the Chairman will convene an unassembled meeting and take a vote of the full Membership on the proposed position or defer consideration of the position to the next meeting of the Membership.]



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DIGITAL INFORMATION TASK FORCE
Office of Federal Agency Programs

The Digital Information Task Force (Task Force) addresses the need for more uniformly available digital tools, including geographic information systems (GIS), to improve planning for federal projects by making information about the location of identified historic properties more readily available. Such information can provide a platform for development of preservation outcomes. Better information access has a clear connection to current government-wide efforts to improve the efficiency of environmental reviews, including Section 106 reviews, for infrastructure projects, and can also advance broader ACHP goals such as better engagement of stakeholders and the public in preservation planning.

The Task Force met in Washington, DC, on May 22 to hear from invited members of an Advisory Group, including state and tribal historic preservation officials, technical experts, consultants, representatives of industry, and others with policy or operational experience in digital information management, about how different natural and cultural resources organizations have approached developing and maintaining geospatial (i.e., GIS) databases and other digital planning tools. The Task Force will build on this information as members formulate recommendations and plan for other products and actions to advance its goal of improving the availability of digital and geospatial information about historic properties to inform federal project planning.

A summary of the May 22 meeting is attached. It concludes with four proposed issue areas in which the Task Force will focus further study leading to the development of recommendations and/or implementation tasks. The summary has been circulated to Task Force and Advisory Group members for their reaction and comments, and the chairman of the Task Force will provide an update based on the feedback at the Federal Agency Programs Committee meeting.

Action Needed. Task Force Chairman Tannenbaum will provide an update on recent developments at the business meeting. Members are encouraged to share their thoughts on the proposed issue areas and offer suggestions for strategies to address them based on the cultural resources digital information management concerns of their respective organizations.

Attachment. Digital Information Task Force Meeting notes

June 25, 2019

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Digital Information Task Force Meeting
May 22, 2019

Attendance:

Jordan Tannenbaum, Task Force Chairman
Dorothy Lippert, ACHP expert member
Caroline Henry, DOI
Colleen Vaughn, USDOT
Erik Hein, NCSHPO
Shasta Gaughen, NATHPO
Stephanie Paul, NAPC
Tom Cassidy, NTHP
Michael Drummond, CEQ

Nathan Boyless, Metcalf Archaeological Consultants
Allyson Brooks, WA SHPO
Garet Couch, National Tribal Geographic Information Support Center
Tony Cross, Eglin AFB
Karyn deDufour, NV DSHPO
Briece Edwards, Confederated Tribes of the Grand Ronde THPO
Terry Klein, SRI
Ernest Ladkani, TCenergy
Deidre McCarthy, Cultural Resource GIS Facility, NPS
Lori Scott, NatureServe
Marion Werkheiser, Cultural Heritage Partners
John Fowler, Executive Director, ACHP
Reid J. Nelson, Director, Office of Federal Agency Programs, ACHP
Blythe Semmer, Office of Federal Agency Programs, ACHP
Alexis Clark, Office of Federal Agency Programs, ACHP
Frank McManamon, tDAR

Chairman Tannenbaum began the Task Force meeting by revisiting the focus that the members defined in March to formulate recommendations for how the availability of digital and geospatial information about historic properties can be improved to inform federal project planning.

John Fowler (ACHP) described the Task Force's anticipated products as not necessarily a singular report, but perhaps a group of efforts with a focus on how digital information relates to and supports Section 106 reviews. Task Force members should consider what the Task Force can do versus recommendations or other proposals to bring to the ACHP membership.

A series of presentations from members of the Advisory Group followed. Advisory Group members were invited to join in the meeting based on their policy, operational, and technical experience in digital information management. Discussion and questions followed each one of these presentations.

Karyn deDufour (Nevada SHPO) described the National Conference of State Historic Preservation Officers' (NCSHPO) 2017 survey of data managers. The survey showed 70% of SHPOs have GIS of some kind. Most manage their own historic structures data, though 30% rely on a sister agency to manage archaeological data for their states. SHPOs are challenged by finding financial sources beyond their HPF funding to build and maintain data systems. The group estimates that \$150,000 per year is the average cost to maintain a basic GIS solution. Beyond cost, organizational challenges face the 60% of SHPOs who do not manage their own IT resources. More opportunities and resources to take advantage of peer support could be an asset to SHPOs dealing with these challenges and other questions about digital information management that may have been previously solved by colleagues in other states.

Ms. deDufour shared a case example in which the Western Electricity Coordinating Council used historic properties GIS data available over several states to construct a risk model for electrical projects. Detail was kept rough, and specific sites were not pinpointed, but the model shows areas where there has been no previous survey and the presence of historic properties is unknown. The BLM's data sharing partnership with western SHPOs and the transferability of a common data standard help make the kind of GIS data needed to feed such a model available. She also discussed how the Nevada SHPO requires site data to come in via GIS shape files and has an internal process for adding that data to the SHPO's GIS layers in the course of the 106 review process.

Briece Edwards (Confederated Tribes of the Grand Ronde THPO) discussed how the tribe uses GIS to support stewardship responsibilities. He addressed the set-up and maintenance challenges involved in working with multiple agencies each using different nomenclature for properties and in engaging with cultural protocols about whether data can be put in digital form. He touched on the utility of technology to power notification tools that would help tribes learn about projects. It is important to understand how digital information is being used. Mr. Edwards also spoke about the challenge of data accuracy with respect to locational and cultural references as well as staffing to ensure accurate and complete information is what is managed.

Garet Couch (National Tribal Geographic Information Support Center) introduced the Task Force to his organization, which has about 400 member tribes. While not all tribes have GIS, some have very sophisticated systems, yet most tribal GIS data is highly protected and secured and not for public consumption. Awareness of the sensitivity of this data is an important consideration at multiple levels of data handling and access. Mr. Couch serves on the National Geospatial Advisory Committee and informed the Task Force about that organization's report on data security, forthcoming in September. He also spoke to the efficiencies that a map-based electronic tribal notification system (perhaps with similar functions to FCC's TCNS) could have for the federal project planning process by ensuring that interested tribes hear about projects planned in their ancestral territories. By facilitating communication, an online system could help all parties better understand the effects of federal projects.

Task Force and Advisory Group members discussed issues of access confidentiality and data security as well as the concept of tribal notification systems. Arizona's consultation toolkit was mentioned as a good example, as was a TxDOT GIS secured for the exclusive use of tribes. While some members had questions about whether tribes would want to hear about all possible projects contemplated in their areas of interest, Mr. Edwards noted that such systems could be configured to register tribal preferences about what sort of notifications to receive. One major challenge would be finding a single entity to "own" or maintain such a platform.

Marion Werkheiser (Cultural Heritage Partners) and Ernie Ladkani (TCEnergy) talked about Leaders in Energy and Preservation's (LEAP) development of a heat map-style risk management tool for three counties in Ohio involved in shale gas development. Mr. Ladkani emphasized the importance to industry of using mapping tools to be able to avoid disturbing historic properties to the extent possible. The time-saving potential of systems that offer this is an incentive to infrastructure industry firms to help fund them. Nathan Boyless (Metcalf Archaeological Consultants) agreed, noting that his firm's work with industry clients means doing more digitally and at a greater distance now, and that saved time is the biggest incentive. The group discussed how industry investment in cultural resources data systems could be channeled to units of government that review projects. Chairman Tannenbaum suggested that perhaps a foundation could be the conduit if it had an overarching interest but was not specifically industry-related.

Lori Scott (NatureServe) demonstrated the GIS platform that her organization has developed for multiple states focused on their biodiversity and endangered species. It aggregates data from multiple states and organizations by using a common taxonomy. The system displays information about where species and ecosystems are located as well as their conditions. A new tool developed by NatureServe uses environmental predictors of likely habitat to help show areas with greater or lesser development risk. In adapting the platform to different states, NatureServe has incorporated cultural resources in some cases. Virginia included a cultural resources preservation index in its maps and united them with natural resources layers, resulting in one GIS system that encompasses most environmental factors to be considered in project planning. Other functions can automate parts of the environmental review workflow.

Deidre McCarthy (NPS) shared information about the Geospatial Data Act of 2018 and the Federal Geographic Data Committee, within which the NPS-led subcommittee developing the cultural resources data transfer standard is situated. The National Geospatial Advisory Committee (NGAC), which advises the Federal Geographic Data Committee, is jointly coordinated by Interior and OMB. Ms. McCarthy shared that the NGAC also has a cultural resource subcommittee, which is working on developing recommendations regarding geospatial data security among other issues relevant to the ACHP effort.

Task Force and Advisory Group members had a short time to talk about some of the major issues they saw emerging from the presentations and discussion. There was shared feeling good examples are needed and that success stories of how SHPOs have funded their GIS investments and of federal agencies that have embraced digital information management and exchanges for cultural resources would help. The group considered some of the potential funding opportunities that could help SHPOs in particular, noting that preservation stakeholders must illustrate the value of using GIS data in planning applications involving historic properties. Mr. Boyless summarized three goals as standardizing the data transfer process, digitizing existing data, and improving the accessibility of such information. In order to develop a road map to accomplish these things, the Task Force members and others agreed the ACHP staff would make an initial list of areas for further study and action and share that with the Task Force. Mr. Fowler noted that formulating priorities would position the Task Force and the ACHP membership to highlight these for consideration in the 2021 budget process. There may also be opportunities to make progress on some elements in the 2020 budget.

The ACHP staff has identified the following general issue areas emerging from the meeting. Task Force and Advisory Group feedback is requested.

ISSUE: Enabling cultural resources GIS data exchange between states, tribes, local governments, and federal agencies

The Federal Geographic Data Committee is close to finishing a federal cultural resources data transfer standard, which will be mandatory for federal agencies. These standards concern the portability of GIS spatial data from one system to the other, not the substantive content describing historic properties. SHPOs and tribes set their own data standards but could benefit from certain data sharing relationships with federal agencies and could use the federal standard as a point of reference in developing their own. One risk in having many individual systems across the country is the potential that they will not be able to share data when and if need arises, such as during emergencies, or that review processes will have to be constantly customized. Some level of consistency is desirable to facilitate data exchanges and the addition of new data over time. Such data transfer standards would resolve the potential differences between various systems and facilitate timely data exchange.

ISSUE: Overcoming SHPO data management impediments to increase GIS availability

SHPOs work within many different organizational structures with varying levels of control over their IT resources and data sets. The NCSHPO Data Managers Group has formed to support SHPOs in this regard, but they lack resources to convene, particularly regionally. Many problems have already been addressed by one or more SHPOs, but structures are not in place to allow for easy knowledge sharing. Opportunities for consensus building and innovation around successful data management approaches can help avoid every state developing its own solutions, potentially at greater expense and less consistency.

ISSUE: Identifying opportunities for funding and resource enhancement

SHPOs and THPOs rely on other sources of funding besides HPF grants to advance their digital information management. Funding constraints and opportunities to create, expand, and maintain SHPO and tribal GIS systems need to be explored and understood so states and tribes can model successes from their colleagues with the support of preservation partners. The resources required to make GIS a useful tool for the federal project planning process also include human and technological resources.

ISSUE: Properly managing access and securing sensitive data

Controlling access to historic properties data and location information is a major concern in developing GIS tools and offering greater access to these tools, particularly for Indian tribes and also in relationship to archaeological sites. Participants in the federal preservation program should adopt best practices for managing cultural resources data informed by existing work on data security in the field and by the policies of individual agencies, states, or tribes. Alternative means of using mapping technology to facilitate functions within the federal project planning process could help ensure prompt communication between federal agencies, applicants, and Indian tribes to lay the groundwork for project consultation.



Preserving America's Heritage

GAO REPORT:
Tribal Consultation: Additional Federal Actions Needed for Infrastructure Projects
Office of Native American Affairs

Background. The Government Accountability Office (GAO) issued a report, [*Tribal Consultation: Additional Federal Actions Needed for Infrastructure Projects*](#), in March 2019. The report is a response to a congressional request for GAO to review federal agency processes for consulting with Indian tribes on infrastructure.

For the report, GAO examined regulations, policies, and guidance that 21 agency members of the Federal Permitting Improvement Steering Council identified as applicable to tribal consultation for infrastructure projects and related activities. GAO also analyzed oral and written comments from 100 Indian tribes provided to the Departments of Defense, the Interior, and the Army in 2016 during their outreach regarding tribal consultation in federal infrastructure development. Finally, GAO interviewed officials from 50 Indian tribes and representatives of eight intertribal organizations in 2017.

The report summarizes the major issues raised by Indian tribes regarding federal consultation for infrastructure development:

- Timing of consultation
- Agency identification of tribes
- Agency identification of tribal resources
- Agency notification of consultation opportunities
- Agency consideration of tribal input
- Communication between tribes and agencies
- Scope of issues for consultation
- Opportunities for consent
- Agency respect for tribal sovereignty or the government-to-government relationship
- Agency fulfillment of tribes' expectations for the trust responsibility
- Agency efforts to honor treaty rights
- Agency accountability

The GAO report also identifies a number of recommendations to improve tribal consultation procedures of the 21 federal agencies addressed in the report:

- The Departments of Energy, Housing and Urban Development, and Homeland Security, Environmental Protection Agency, and the Fish and Wildlife Service should develop policies on consultation with Alaska Native Corporations on the same basis as Indian tribes
- Sixteen of the agencies should address, in their policies, communication with Indian tribes after consultation to convey how tribal input was considered
- The development and maintenance of a centralized information system for identifying and notifying Indian tribes is advantageous

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Additionally, since the Army Corps of Engineers and the ACHP have been unable to resolve differences in the Corps' Section 106 procedures (commonly called Appendix C), Congress should consider taking legislative action to resolve the issues.

Discussion. While the GAO report does include specific recommendations on several issues, the majority of the concerns put forward by tribes in the interviews are not addressed. Taken together, they portray a wide range of shortcomings in how federal agencies interact with tribes in the Section 106 process. They also echo the findings of the ACHP when it issued its own report in March 2017, [*Improving Tribal Consultation in Infrastructure Projects*](#). That report was prepared to address the Section 106 issues raised in the interagency tribal consultation that took place in the fall of 2016. In the report, the ACHP offers recommendations for how federal agencies, as well as the infrastructure industry, can improve tribal consultation for infrastructure projects.

Taking the recent GAO report together with the ACHP's report, there is a useful record of tribal concerns along with a host of potential agency actions that could help resolve them. The ACHP has before it an opportunity to further advance its recommendations to improve the engagement of tribes in infrastructure project reviews and respond positively to the GAO report.

Action Needed. At the business meeting, a GAO representative will offer a brief summary of GAO's reasons for addressing tribal consultation in infrastructure projects, its efforts to study the issue, and its findings and recommendations. Federal members will have the opportunity to share how their departments or agencies plan to address GAO's recommendations as well as relevant tribal concerns. Members will have the opportunity to consider what steps, if any, the ACHP should take in the wake of the report.

June 25, 2019



Preserving America's Heritage

SECTION 106 STATUS UPDATES Office of Federal Agency Programs

Rail Rights-of-Way Program Comment Guidance. On August 17, 2018, the ACHP issued the Program Comment to Exempt Consideration of Effects to Rail Properties within Rail Rights-of-Way. The development and issuance of this Program Comment was carried out in compliance with Section 11504 of the Fixing America's Surface Transportation Act (FAST Act), which required that the ACHP issue an exemption for certain rail and transit rights-of-way. The Program Comment offered two approaches to meet the statutory requirement to exempt railroad rights-of-way (ROW) from Section 106 review: the Activities-Based Approach and the optional Property-Based Approach. Since its issuance, the Department of Transportation (DOT), Federal Railroad Administration, Federal Transit Administration, and Federal Highway Administration (FHWA) have applied the Activities-Based Approach to more than 100 projects, allowing for faster approval and implementation of such projects.

The optional Property-Based Approach cannot go into effect until DOT publishes implementing guidance in accordance with section IV.C. of the Program Comment. This optional approach allows a Project Sponsor to propose, and the DOT to approve, a list of "excluded historic rail properties" within a defined study area that would remain subject to Section 106 review. Effects to other historic rail properties within a study area that were evaluated but not included on the DOT-approved list would be exempt from Section 106 review. This guidance was to be published within nine months of the Program Comment's issuance, which was May 17, 2019. However, as a result of the 35-day partial government shutdown this winter, the DOT's new departmental review process for guidance documents, and the need for necessary stakeholder reviews, DOT was not able to complete the guidance within that deadline and requested a 150-day extension to complete it by October 14, 2019. Accordingly, the ACHP had an unassembled meeting to vote to amend the Program Comment for this extension, which passed on June 10, 2019.

As part of the schedule for completing this guidance, DOT is providing ACHP members and stakeholders an opportunity to review the draft guidance. The guidance will provide instructions and examples for evaluating rail properties for potential designation as excluded historic rail properties to remain subject to Section 106 review; describe the process by which a project sponsor may propose excluded historic rail properties to a DOT's Operating Administrations (DOT OAs), including early coordination between the project sponsor and the DOT OA; establish timeframes for DOT OA review of proposals and designation of excluded historic rail properties; and establish State Historic Preservation Office (SHPO), federally recognized Indian tribes, preservation organizations, and public involvement methods.

It is anticipated that this draft guidance will be available for ACHP review shortly before the July business meeting. Staff will work to distribute the draft to the members as early as possible to facilitate an initial review and discussion by the members at the Federal Agency Programs (FAP) Committee and business meetings. Input from the members to ACHP staff will be used to advise DOT on the finalization of this guidance. It is anticipated that in addition to this opportunity, members will also be invited to participate in a teleconference later during the review period to ask additional questions and suggest substantive edits.

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Twilight Towers. On December 14, 2017, the Federal Communications Commission (FCC) issued a Public Notice regarding its intent to request from the ACHP a Program Comment on Twilight Towers that would allow applicants to use these existing structures for collocation of antennae in the deployment of 5G. The Program Comment would open up thousands of towers for collocation without the need to conduct individual Section 106 reviews. Currently, Twilight Towers constructed between 2001 and 2005 are unavailable for collocations because FCC is not able to ensure that each of these towers were subject to a Section 106 review and consultation with SHPOs and Tribal Historic Preservation Officers (THPOs) when originally constructed.

While ACHP staff offered its general views to FCC on this matter, and the FAP Committee provided comments to Commissioner Brendan Carr in the March 2018 committee meeting, FCC did not subsequently submit a formal request to the ACHP for a Program Comment. Following the March 2018 committee meeting, ACHP staff hosted a meeting with FCC, industry representatives, and preservation partners to discuss the primary issues regarding the FCC's request, which included the identification of such towers, and the resolution of any potential adverse effects. FCC indicated it would take such comments into consideration when drafting a Program Comment.

In May 2019, FCC staff provided an update to ACHP staff regarding the proposed Program Comment, which had been postponed following the rollout of the 5G effort. During the teleconference, the ACHP shared advice with FCC to develop an appropriate consultation strategy, using recent experiences with the Rail and Department of Veterans Affairs (VA) Program Comments. Staff also shared with FCC its intent to seek the designation of a sub-group of members to advise it as it works with FCC in advance of the formal request for the Program Comment to ensure it is ready for full membership consideration. Staff will update committee members on the status of discussions with FCC on advancing this alternative.

I-95 Providence Viaduct. On January 19, 2017, FHWA terminated its Programmatic Agreement (PA) for the reconstruction of two bridges along the I-95 corridor in downtown Providence, Rhode Island. In accordance with the regulations, the ACHP provided its advisory comments to the Administrator of FHWA on May 3, 2017, via a chairman's letter. The ACHP's comments related to several areas of the consultation but focused on the transfer of three properties of significance to the Narragansett Indian Tribe (NIT) that had been mandated by the PA but which could not be carried out in accordance with that agreement.

The FHWA Deputy Administrator responded to ACHP's comments on June 28, 2018, noting that it was electing to re-initiate the Section 106 consultation process for the undertaking rather than considering the ACHP's comments. Since that time, the ACHP has consistently recommended that FHWA take any and all steps to facilitate meaningful consultation with the NIT, and encouraged the development of mitigation measures that would be of benefit to the NIT in the event that the land transfer could again not be completed.

At this time, FHWA has secured the transfer of one of the properties directly to the NIT in accordance with the provisions within the prior PA. FHWA is proposing that the remaining two properties be held by the Rhode Island Department of Transportation, with preservation covenants to ensure preservation and access by the NIT in perpetuity. A new PA has been drafted that reflects these stipulations, and FHWA has signaled its interest in executing the new PA soon. Given the prior involvement of the full membership in reviewing the chairman's letter, staff will provide an update on the status of this high-profile consultation at the business meeting.

Department of Veterans Affairs Program Comment on Vacant and Underutilized Properties. On October 26, 2018, the ACHP issued the "U.S. Department of Veterans Affairs Program Comment for

Vacant and Underutilized Properties” (PC) to address VA’s real property actions related to the reduction of vacant and underutilized properties in VA’s inventory.

The PC establishes efficiencies and an expedited review process for real property actions related to the transfer of property rights of vacant and underutilized buildings, structures and land, including outleases, exchanges, sales, transfers, conveyances, deconstructions and demolitions, and for certain maintenance and repairs of such properties. The steps proposed in the PC encourage reuse of non-utilitarian historic properties through leasing solicitations and give priority consideration to reuse proposals that incorporate the retention of character-defining features of these properties, while expediting the review process for non-historic properties and historic properties that have been characterized as utilitarian.

The PC does not apply to: (1) archaeological properties; (2) properties of traditional religious and cultural significance to federally recognized Indian tribes or Native Hawaiian organizations; or (3) National Historic Landmarks.

Section 3 requires that for each year the PC is in effect, VA will provide the ACHP with: (a) a composite list of properties that could be subject to the PC should an applicable undertaking covered by the PC be proposed; and (b) a narrative explaining its conclusion that historic utilitarian properties may be eliminated without endangering the continued National Register eligibility of the historic districts in which they are located. VA submitted this documentation to the ACHP on April 1, 2019.

In its documentation, based upon FY18 reporting to the Federal Real Property Profile (FRPP), VA provided a list of 391 buildings that could be subject to the PC, should an applicable undertaking be proposed. Buildings on this list have been reported as vacant or underutilized to the FRPP for 12 months or longer. Based on past FRPP reporting, for 2019 the PC list will solely consist of buildings. In following years, VA may expand the list to include structures.

On April 8, 2019, the ACHP posted this documentation on a publically accessible web page dedicated to the VA PC (<https://www.achp.gov/VA/VAProgramComment>) and emailed the National Conference of State Historic Preservation Officers (NCSHPO), State Historic Preservation Officers, Tribal Historic Preservation Officers, Indian tribes, Native Hawaiian organizations, interested Veterans Service Organizations, and ACHP members about its availability, along with a reminder that this email marked the beginning of the annual 60-day period where interested parties could review and comment on the vacant and underutilized properties on the list. The deadline for requesting additional information, sending comments, and/or providing an objection to VA regarding the properties on the list was June 7, 2019.

During the comment period, interested parties provided VA’s Federal Preservation Officer with requests for additional information, comments, and objections concerning the properties on the 2019 list of 391 vacant and underutilized properties. VA is currently reviewing and responding to these submissions. Should there be any objections that VA is unable to resolve with the objecting party, VA will refer the matter to the ACHP for comments. Upon receipt of the referral, the ACHP has 30 days to provide comments to VA. VA will consider any such timely comments. Thereafter, and prior to proceeding with an undertaking involving the properties at issue, VA will notify the relevant party and the ACHP as to its final decision on the issue. Once the questions, comments, and objections regarding properties on the list are resolved, VA may proceed with utilizing the PC for applicable undertakings.

Proposed National Register Regulations. In March 2019, the National Park Service published a notice of proposed rulemaking regarding the regulations governing eligibility determinations and nominations to the National Register of Historic Places. The ACHP submitted comments on April 26 highlighting several concerns with the proposed rule, including potential conflicts with the Section 106 regulations and in

particular with the process to resolve disputes over eligibility in the course of a Section 106 review; limiting the ability of other nominating authorities to nominate properties under federal jurisdiction or control to the National Register; modifying the statutory right to appeal a nominating authority's failure to nominate a property under federal jurisdiction or control to the National Register; and creating uncertainty in the landowner requirements for objecting to a proposed listing. The letter concluded by raising concerns with the NPS' process for publishing the proposed rule without interagency coordination or consultation with SHPOs or Indian tribes. In late May, ACHP staff met with staff from the Office of Management and Budget, along with NCSHPO and the National Association of Tribal Historic Preservation Officers, to further discuss its concerns with the proposed rule and process. NPS recently published a notice of tribal consultation on the proposed rule in the *Federal Register* and said it will accept additional written comments from tribes until July 8, as well as host a consultation meeting on June 24 in association with the National Congress of American Indians' Mid-Year Conference and a teleconference on July 1. Issuing a final rule is a high priority for the Department of the Interior, which has a goal of completing the rulemaking process this fall.

June 25, 2019



Preserving America's Heritage

**ACHP LEGISLATIVE AGENDA
116th CONGRESS
PROPOSED ACHP ACTION ON
SEVERAL PRESERVATION-RELATED BILLS
Office of Preservation Initiatives**

Background. Several preservation-related bills that recently have been introduced in Congress are good candidates for member review and possible action. The Administration has taken a position on most of the bills. Issues addressed in the bills include the following: National Park Service (NPS) deferred maintenance; enhancing the Historic Tax Credit; preserving historic battlefields; the National Heritage Area program; and preservation of African American burial grounds.

Staff is recommending consideration of motions of support for the following bills as set forth at the end of this paper.

Restore Our Parks Act (S. 500)/ Restore Our Parks and Public Lands Act (H.R.1225). These bills (introduced on February 14) seek to address the deferred maintenance backlog at Department of the Interior (DOI) properties, including historic properties. DOI estimates that it currently has a backlog of about \$18 billion worth of deferred maintenance. The largest portion of that total—\$11.9 billion—reflects needed maintenance of NPS properties.

The bills would create a fund from federal energy development revenues and would authorize up to \$1.3 billion a year for five years to be deposited into the fund. NPS would receive 100 percent of the fund in the [Restore Our Parks Act](#) and 80 percent in the [Restore Our Parks and Public Lands Act](#). Under the latter bill, 10 percent of the fund would go to the Fish and Wildlife Service, 5 percent to the Bureau of Land Management, and 5 percent to the Bureau of Indian Education schools. Both bills were introduced in the last Congress, and substantial progress was made toward a bipartisan agreement. The 115th Congress ended prior to the last negotiations being completed, and the bills have been reintroduced. The bills have been referred to committee.

Administration Position. The President's [FY 2020 budget](#) included the funding program as set forth in the Restore Our Parks and Public Lands Act.

Previous ACHP Position. It has been estimated that 47 percent of the NPS assets needing repair are historic buildings, structures, roads, and bridges, making deferred maintenance a major preservation concern. At the July 2018 ACHP meeting, the voting ACHP members unanimously supported the referenced legislation (with one abstention). [Letters of support](#) from Chairman Wayne Donaldson were sent to Congress.

Historic Tax Credit Growth and Opportunity Act (H.R. 2825). [This bill](#) (introduced May 17) would make strategic changes to the existing federal Historic Tax Credit (HTC) to: incentivize smaller projects by increasing the credit from 20 percent to 30 percent for projects with rehabilitation costs of \$2.5 million

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or less; make more buildings eligible for the credit by lowering the substantial rehabilitation threshold; eliminate the basis adjustment that decreases the value of the credit; and make the HTC easier to use by non-profits. Some of these changes will help restore value to the credit that was lost during tax reform in 2017, when the credit was modified so that it must be claimed over a five-year period instead of all at once.

Administration Position. The Administration has not taken a position on the bill.

Previous ACHP Position. This is the first Congress that this bill has been introduced, thus the ACHP has not formerly considered it. However, the ACHP has consistently and strongly supported previous legislation that would maintain and enhance the HTC. One of the ACHP's mandates under the National Historic Preservation Act is to recommend the conduct of studies in such areas as the effects of tax policies on historic preservation. The ACHP's most recent [letter](#) supporting the HTC was written as the credit's fate was under consideration during tax reform in 2017.

Preserving America's Battlefields Act (S. 225/H.R. 307). [This bill](#) (introduced in the House and the Senate on January 8 and January 24, respectively) would expand funding and extend authorization for the Battlefield Land Acquisition Grant Program. The program provides matching grant funds for acquisition of parcels associated with Revolutionary War, War of 1812, and Civil War battlefields. The bill would double the annual funding authorization to \$20 million and extend the program to 2028. The legislation also would allow the use of up to 10 percent of the annual appropriation for projects other than land acquisition. These projects include the following: up to \$1 million in grants to non-profits for programs and projects that improve battlefield interpretive and educational assets and technologies; and up to \$1 million in grants to non-profits for the restoration of day-of-battle conditions on land preserved through the program.

Administration Position. On May 22, the House Natural Resources Subcommittee on National Parks, Forests, and Public Lands held a hearing on the bill. At that hearing, [NPS testified](#) in support of the bill, with the request that it be amended to require that any day-of-battle restoration funded under the bill be performed in accordance with the Secretary of the Interior's standards for historic preservation.

Previous ACHP Position. The ACHP has not commented in recent years on funding for the program but did send a [letter](#) to Congress in 2014 in support of the program's expansion to address not only Civil War sites but also Revolutionary War and War of 1812 sites.

National Heritage Area Act (H.R. 1049). [This bill](#) (introduced February 7) would provide a formal program structure for the current ad hoc system of congressional designation and oversight of National Heritage Areas. Over the past 35 years, Congress has authorized 55 National Heritage Areas in 34 states, including six new areas designated this March. There also are a number of National Heritage Area feasibility studies in process. While NPS manages funding and administration through its Heritage Partnership Program, the bill would create a codified National Heritage Area system with national standards and processes for feasibility studies, designations, and heritage area management plans. Efforts to pass similar legislation over the past 15-plus years have been unsuccessful.

Administration Position. On April 30, the House Natural Resources Subcommittee on National Parks, Forests, and Public Lands held a hearing on the bill. At the hearing, [NPS testified](#) that it supports establishing a statutory framework for the National Heritage Area program. However, DOI asked that the committee defer action to give NPS an opportunity to work with the sponsor and the committee on revisions. Specific needed changes were not cited, but the testimony noted

ongoing issues of funding equity between National Heritage Areas and questions regarding the intent of congressional funding caps for heritage areas.

Previous ACHP Position. The ACHP last sent a [letter of support](#) on a national heritage program bill in 2005. That correspondence stressed the importance of national policymaking on National Heritage Areas in order to bring increased predictability and consistency, a need which only has increased over the past 14 years.

African American Burial Grounds Network Act (H.R. 1179). [This bill](#) (introduced February 13) would create an NPS program called the African American Burial Grounds Network. NPS would be tasked with coordinating and facilitating federal and non-federal activities to identify, interpret, preserve, and record unmarked, previously abandoned, underserved, and other African American burial grounds. This would include creation of a database of such sites and development of educational materials. NPS would be authorized to make grants and provide technical assistance. The legislation has been endorsed by a number of national, state, and local organizations, including the National Trust for Historic Preservation.

Administration Position. On May 22, the House Natural Resources Subcommittee on National Parks, Forests, and Public Lands held a hearing on the bill. At that hearing, [NPS testified](#) against the bill and recommended that it be amended to provide for a study to determine the most appropriate way of recognizing historic African American burial grounds in lieu of establishing another network-style program. (NPS already is tasked with administering the National Underground Railroad Network to Freedom, the African American Civil Rights Network, and the Reconstruction Era National Historic Network.) NPS noted that the program would be challenging to implement with existing funding. It also raised concerns regarding the potential for damage to currently unmarked sites from inclusion in a public database.

Previous ACHP Position. This is the first Congress that this bill has been introduced, thus the ACHP has not formerly considered it. Its topic, however, is fully in keeping with the ACHP's commitment to building a more inclusive historic preservation program. The ACHP also previously expressed support for the network program type in a [letter](#) that supported creation of a Transcontinental Railroad Network while acknowledging NPS's valid concern regarding operationalizing such a network using existing resources.

Action Needed. Staff suggests that the Preservation Initiatives Committee consider recommending the adoption of the following five motions by the full membership:

- **Moved, that: the ACHP supports the Restore Our Parks Act (S. 500)/Restore Our Parks and Public Lands Act (H.R.1225); and directs the chairman to advise the Congress of this support.**
- **Moved that: the ACHP supports the Historic Tax Credit Growth and Opportunity Act (H.R. 2825); and directs the chairman to advise the Congress of this support.**
- **Moved that: the ACHP supports the Preserving America's Battlefields Act (S. 225/H.R. 307) and the National Park Service recommendation that the bill be amended to require day-of-battle restoration efforts funded under the bill be performed in accordance with the Secretary of the Interior's standards for historic preservation; and directs the chairman to advise the Congress of this support.**

- **Moved that: the ACHP supports the National Heritage Area Act (H.R. 1049); and directs the chairman to advise the Congress of this support and also to urge Congress to work with the National Park Service to address operational concerns raised in the agency's testimony of April 30, 2019.**
- **Moved that: the ACHP supports the African American Burial Grounds Network Act (H.R. 1179); and directs the chairman to advise the Congress of this support and also to urge Congress to work with the National Park Service to address operational concerns raised in the agency's testimony of May 22, 2019.**

June 25, 2019



Preserving America's Heritage

CHACO CULTURAL HERITAGE AREA PROTECTION ACT **Office of Preservation Initiatives and Office of Federal Agency Programs**

Background. The [Chaco Cultural Heritage Area Protection Act](#) (S. 1079/H.R. 2181) (introduced on April 9) would create an approximately 10-mile protective zone around Chaco Culture National Historical Park, which also comprises the bulk of the Chaco Culture World Heritage Site. Within the protective zone, minerals owned by the federal government would be withdrawn from future leasing and development. (The remainder of the minerals owned by private, state, and tribal entities would not be subject to the withdrawal.) The greater Chaco area was a major center of prehistoric Pueblo culture in the Four Corners Area and remains of transcendent spiritual and traditional cultural importance to many Indian tribes in the region.

Development in the area has been the subject of extensive ACHP engagement in Section 106 reviews in recent years. In March, the ACHP wrote [a letter](#) to then-acting Interior Secretary David Bernhardt stressing the need for a comprehensive approach to protection and sound management, a problem highlighted by repeated proposed oil and gas lease sales that threaten to damage sites and encroachment from approved development.

On April 15, the House Natural Resources Energy and Minerals Resources Subcommittee hosted a site visit and field hearing to consider the environmental impacts of oil and gas development on sacred sites such as Chaco. ACHP Executive Director Fowler attended the events, but did not testify. New Mexico Gov. Michelle Lujan Grisham testified, as did the leadership of the All Pueblo Governors' Council, Acoma Pueblo, and the Navajo Nation. All indicated support for the Chaco Cultural Heritage Area Protection Act. Shortly after these events, the New Mexico State Land Commissioner established a four-year moratorium on new oil and gas leasing on state trust lands in an area very similar to the 10-mile protective zone proposed in the bill.

ACHP Support for the Bill. After learning that the Natural Resources Committee planned to mark up the bill in the near term without an additional hearing, it appeared that the ACHP would have to move quickly if it was to provide advice on the legislation. In accordance with provisions of the ACHP Operating Procedures addressing situations requiring expedited action on legislation, the executive director consulted with the Executive Committee in crafting a letter of support for the bill. A [letter was sent to the House](#) on April 30, and an essentially identical [letter was sent to the Senate](#) on May 21, following a hearing on the bill in the Senate Energy and Natural Resources Subcommittee on Public Lands, Forests, and Mining.

Court Decision Regarding Oil and Gas Development Near Chaco. On May 7, the U.S. Court of Appeals for the 10th Circuit reversed a lower court ruling on a suit involving Chaco that was filed in 2015. The court ruled that the Bureau of Land Management (BLM) violated the National Environmental Policy Act because it failed to account for the cumulative impacts of fracking in the greater Chaco region when issuing certain permits to drill.

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New Federal Moratorium on Oil and Gas Leasing. On May 28, Secretary Bernhardt visited Chaco Culture National Historical Park at the invitation of Senator Martin Heinrich. Following the visit, Secretary Bernhardt announced that he would be placing a one-year moratorium on federal oil and gas leasing in the proposed 10-mile protective zone. The ACHP sent [letters of appreciation and commendation](#) to Secretary Bernhardt and Senator Heinrich in the wake of this decision.

Administration Position on the Bill. At a May 14 hearing of the Senate Energy and Natural Resources Subcommittee on Public Lands, Forests, and Mining, BLM indicated that it would be premature to take a position on the bill. The reason given was that the agency was in the process of developing a Resource Management Plan (RMP) amendment for the area and needed to first complete the Section 106 process for that action. However, following Secretary Bernhardt's visit, BLM testified at a June 8 hearing of the House Natural Resources Subcommittee on National Parks, Forests, and Public Lands that the Department of the Interior has no objection to the bill. BLM further testified that the Secretary had directed inclusion in the draft RMP of an alternative reflecting the views of tribal leaders, which generally support the proposed protective zone included in the bill.

House Appropriations Committee Directive to BLM. In its June 3 [committee report \(page 15\)](#) accompanying the Department of the Interior, Environment, and Related Agencies Appropriations Act (H.R. 3052), the House Appropriations Committee directed BLM to refrain from proposing new leases within 10 miles of Chaco Culture National Historical Park. The Committee also instructed BLM to prioritize planning updates for the region, increase cultural resources inventories in cooperation with the State of New Mexico and tribes, and engage in meaningful government-to-government consultation with tribes.

Action Needed. This information is provided as an update; no member action is needed.

June 25, 2019