



ADVISORY COUNCIL ON HISTORIC PRESERVATION SPRING BUSINESS MEETING

APRIL 15, 2021



MEETING
ADVISORY COUNCIL ON HISTORIC PRESERVATION
April 15, 2021

Meeting via Zoom

Zoom meeting instructions will be sent in a separate email.
In order to join in, please make sure you are registered
by following the instructions in the email message.

PROVISIONAL AGENDA

Call to Order 1:30 p.m. EDT

- I. Vice Chairman's Welcome and Report
- II. Acting Executive Director's Report
- III. Native American Affairs
 - A. Presidential Memorandum on Tribal Consultation
- IV. Section 106
 - A. Section 3 Report to the President (2021)
 - B. Leveraging Federal Historic Buildings Working Group
 - C. Program Comment Review Panel
 - D. Positive Train Control Program Comment Amendment
- V. Historic Preservation Policy and Programs
 - A. Save Oak Flat Act
- VI. Communications, Education, and Outreach
 - A. Engaging Youth
- VII. New Business
- VIII. Adjourn



MEETING
ADVISORY COUNCIL ON HISTORIC PRESERVATION
ANNOTATED AGENDA

- I. Vice Chairman's Welcome and Report. *Vice Chairman Rick Gonzalez will report on his activities acting in the role of chairman and provide an update on the nomination of a new full-time chairman.*
- II. Acting Executive Director's Report. *Acting Executive Director Reid Nelson will report on recruitment, budget, and operations.*
- III. Native American Affairs
 - A. Presidential Memorandum on Tribal Consultation. *Native American Affairs Committee Chairman Reno Franklin will provide an overview of the consultation the ACHP is carrying out with Indian tribes pursuant to Executive Order 13175. No formal action.*
- IV. Section 106
 - A. Section 3 Report to the President (2021). *Members will have an opportunity to review and comment on the draft work plan for implementing the recommendations of the Section 3 report. No formal action.*
 - B. Leveraging Federal Historic Buildings Working Group. *Members will have an opportunity to review and comment on the draft work plan for implementing the recommendations of the Leveraging report. No formal action.*
 - C. Program Comment Review Panel. *Members will be provided an overview of the preliminary findings made by the Program Comment Panel and will be asked to provide input on recommendations and next steps. No formal action.*
 - D. Positive Train Control Program Comment Amendment. *Members will be provided a brief overview of the recent request to amend the Positive Train Control Program Comment issued by the ACHP in 2014. No formal action.*
- V. Historic Preservation Policy and Programs
 - A. Save Oak Flat Act. *Members will be provided an analysis of the Save Oak Flat Act and will have an opportunity to discuss the ACHP's potential support for the Act or portions of it as it relates to the recent ACHP Comment on Resolution Copper. No formal action likely.*

VI. Communications, Education, and Outreach

A. Engaging Youth. *Members will be provided an overview of recent efforts to engage youth and encourage more inclusivity, and be asked to provide input on further actions. No formal action.*

VII. New Business. *There is none at this time.*

VIII. Adjourn. *The meeting is expected to adjourn by 4 p.m. EDT.*



PRESIDENTIAL MEMORANDUM ON TRIBAL CONSULTATION

Office of Native American Affairs

Introduction. On January 26, 2021, President Joe Biden issued a Presidential memorandum requiring federal agencies to submit to the Office of Management and Budget (OMB) within 90 days of the date of the memorandum, a detailed plan of actions federal agencies will take to implement Executive Order (EO) 13175. This plan must be developed after consultation with Indian tribes. The plan must also designate an agency official to coordinate implementation of the plan.

Background. In 2000, President Bill Clinton issued EO 13175: Consultation and Coordination with Indian Tribal Governments which directed federal agencies to “have an accountable process to ensure meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.” The EO also directed federal agencies to designate an official with principal responsibility for the agency’s implementation of the EO and submit to OMB a description of the agency’s consultation process. Valerie Hauser was designated the official, and the ACHP’s first consultation plan was submitted to OMB in 2001. The ACHP submitted an updated plan in 2010 in response to a memorandum issued by President Barack Obama that was similar to the current Presidential memorandum and also required federal agencies to submit a plan to OMB pursuant to the EO.

Current Status. ACHP Native American Member Reno Franklin is working with Vice Chairman Rick Gonzalez, National Association of Tribal Historic Preservation Officers President Shasta Gaughen, and Ms. Hauser to revise the ACHP’s 2010 consultation plan. Vice Chairman Gonzalez has designated Mr. Franklin to represent the ACHP in consultations with tribal leaders. Letters inviting tribal leaders to consult with the ACHP were sent out on February 18 with a copy of the draft plan. Mr. Franklin hosted Zoom meetings with tribal leaders and representatives on March 23 and March 25 to discuss the ACHP’s draft plan and ways in which the ACHP could help improve federal agency consultation, in general. Written comments on the ACHP’s plan were accepted until April 2, and the ACHP’s consultation plan must be submitted to OMB by April 26, 2021.

Along with many other departments and agencies, the Department of the Interior (DOI) initiated its consultation under the Presidential memorandum and hosted four regional calls with tribal leaders during the week of March 8. Since other federal agencies were welcome to listen to the discussions, Ms. Hauser was on all the calls.

Much of the discussions during the ACHP meetings and DOI calls touched on broad tribal consultation challenges and several specific issues. The issues and recommendations offered by tribal leaders and representatives will be considered by the ACHP as it shapes its Native American agenda in the Biden Administration.

Next Steps. The ACHP has a long history of providing leadership and excellence in consulting Indian tribes itself and providing guidance and information to other federal agencies on how they can meet their consultation responsibilities to achieve the same. Consultation on this plan is therefore foundational to all of the ACHP’s broader consultation efforts; thus, it is important for the members to understand the input received from Indian tribes through such consultation efforts. Accordingly, Mr. Franklin will share

ADVISORY COUNCIL ON HISTORIC PRESERVATION

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general tribal comments with the members and recommendations from the members on how best to address this input and improve ACHP consultation with Indian tribes.

April 8, 2021



**IMPLEMENTATION OF
IN A SPIRIT OF STEWARDSHIP:
A REPORT ON FEDERAL HISTORIC PROPERTY MANAGEMENT 2021
Office of Federal Agency Programs**

Background. Section 3 of Executive Order (EO) 13287, “Preserve America,” requires that federal agencies with real property management responsibilities report every three years on their progress in the identification, protection, and use of historic properties in federal ownership and make this report available to the ACHP and the Secretary of the Interior. The ACHP uses these reports to summarize the state of the federal government’s stewardship of historic properties in a triennial report. [*In a Spirit of Stewardship: A Report on Federal Historic Property Management 2021*](#) was delivered to the President on February 16. It examines timely issues that are critical to the management of federal historic properties and how they relate to important issues facing the nation, such as infrastructure, jobs, public-private partnerships, and resiliency.

The ACHP developed several preservation findings and accompanying recommendations to address current concerns in federal preservation practice and further improve federal stewardship of these important properties. The ACHP’s activities in furtherance of Section 3 of the EO now shift to implementing these recommendations in coordination with both federal and nonfederal partners.

Update. The electronic-format report is posted on the ACHP website and has been widely distributed, as reported in the March Federal Agency Programs Committee meeting. Staff has taken comments offered by ACHP members on March 17 and integrated them into the attached Section 3 Report Implementation Action Plan.

Prioritization of the action plan recognizes present challenges in pursuing policy-level initiatives while agency leadership structures continue to await senior appointments by the Administration. It also reflects current opportunities to build on the work of existing ACHP reports and task forces, such as the Leveraging Federal Historic Buildings Working Group (Leveraging WG), the Preservation Trades Training Task Force, and the Digital Information Task Force’s Recommendations and Action Plan.

High-priority, near-term follow-up actions will involve coordination with the Leveraging WG on recommendations to encourage outleasing to nonfederal tenants and cultivate information and expertise within the federal government to use such arrangements for the benefit of preservation goals. Another near-term action is implementation of forthcoming recommendations from the Program Comment Review Panel concerning the use of this program alternative in the context of federal property management activities. The panel is expected to conclude its work by the summer, which would position the ACHP to implement improvements in this area within FY21. Finally, work on updating ACHP guidance regarding highly scientific and technical facilities should be initiated as soon as possible to inform current program alternative development by associated agencies, such as NASA. This action item also benefits from a broad base of past work and staff knowledge.

Other priority implementation actions that have a mid-term action horizon include those related to encouraging partnerships that benefit preservation trades training, which will follow the lead of the

Preservation Trades Training Task Force's ongoing activities, and those related to digital information management, which relate to the ACHP's continuing efforts to implement recommendations from the Digital Information Task Force.

A continuing priority for the ACHP is ensuring the timely and meaningful involvement of Indian tribes and Native Hawaiian organizations in Section 106 compliance and the broader federal preservation program. Those goals receive steady emphasis across ACHP programming and can be considered to have implementation work already underway that supports the specific recommendations in the Section 3 report. The Office of Federal Agency Programs (OFAP) partners regularly with the ACHP's Office of Native American Affairs to adjust and add to such initiatives in response to emerging issues.

Next Steps. OFAP staff will use member feedback on the draft Section 3 Implementation Action Plan to finalize the plan. Next steps and implementation activities will be integrated into the work plans of OFAP and other offices accordingly.

Action Needed. Members should provide comments on the draft action plan, especially concerning the prioritization and sequencing of actions. Members are also asked to share information about how their agencies or organizations can participate in furthering the recommendations and specific implementation actions.

Attachment: Implementation Action Plan

April 8, 2021

In a Spirit of Stewardship: A Report on Federal Historic Property Management 2021
Implementation Action Plan
DRAFT 4/2/21

Finding #1: Leasing historic federal buildings to nonfederal partners promotes their productive use and contribution to local economies, often increasing public access and even transferring maintenance and capital improvement costs to partners in certain circumstances. However, outleasing programs remain small due to inconsistencies among federal agencies in their scope and application, conflicting policies and priorities, limited awareness of these programs, and local economic conditions affecting the availability of partners.

Finding #2: Agencies are advancing in the use of digital tools to better inform real property management, but further improvements are needed to fully integrate historic property information and realize all potential benefits from increased review efficiency for federal and nonfederal project planning.

Finding #3: While the primary benefit of partnerships is to leverage limited federal resources and assist federal agencies in the identification, protection, and use of historic properties, partnerships also contribute important community and educational benefits, including those that enable job training.

Finding #4: Agencies have effectively used Section 106 program alternatives to tailor Section 106 project reviews for multiple land- and property-managing agency benefits, including focusing limited resources on preservation priorities and contributing to comprehensive historic property management strategies. Program alternatives have also improved efficiency and effectiveness of project reviews for infrastructure projects affecting historic properties on federal lands.

Finding #5: Agencies should ensure timely involvement of and active collaboration with Indian tribes and Native Hawaiian organizations in property management activities and infrastructure planning.

Finding #6: As more properties associated with the role of the federal government in advancing science and technology in the late 20th century become eligible for the National Register of Historic Places, they present unique management challenges for federal agencies in preserving their significant characteristics while enabling ongoing use.

Recommendation	Finding #	Priority Within Finding	Partner Agencies	Cross Over	ACHP Office	Anticipated next steps
The ACHP should advocate for revisions to the National Strategy for the Efficient Use of Real Property and federal budget scoring policies.	1	1		Leveraging Working Group	OFAP OPI	
In collaboration with other land-managing agencies, the ACHP should engage the Office of Management and Budget and recommend federal historic outleasements count toward agency strategy goals, thereby removing a significant impediment to federal historic building outleasing.	1	1	Office of Management and Budget	Leveraging Working Group	OFAP OPI	Coordinate with LWG
The ACHP should work with GSA to leverage expertise and resources of existing GSA programs to assist federal agencies in leasing vacant and underutilized historic buildings to prospective nonfederal tenants.	1	2	GSA	Leveraging Working Group	OFAP	

Recommendation	Finding #	Priority Within Finding	Partner Agencies	Cross Over	ACHP Office	Anticipated next steps
The ACHP should work with GSA's Office of Government-wide Policy and the Federal Real Property Council to identify how best to centralize and make accessible pertinent data concerning federal historic real property that may be available for nonfederal use.	1	2	GSA Federal Real Property Council	Leveraging Working Group	OFAP	Research conferences where targeted outreach could increase awareness by potential nonfederal tenants of federal real property outleasing opportunities. Submit conference proposals in cooperation with LWG.
With LWG member agencies, the ACHP should pursue the issuance of an EO to encourage adaptive reuse of historic federal buildings via outleasing.	1	3	VA GSA NASA NPS USDA USPS NCSHPO NTHP	Leveraging Working Group	OFAP OPI	For EO, pursue with new Chairman. Develop sample stipulation language and post in GAD to show how leasing provisions could be incorporated in Section 106 MOAs and PAs.

Recommendation	Finding #	Priority Within Finding	Partner Agencies	Cross Over	ACHP Office	Anticipated next steps
The ACHP should work with federal agencies to implement recommendations in the ACHP's Digital Information Task Force Recommendations and Action Plan.	2	1		Digital Information Task Force	OFAP	Publicize federal cultural resources data transfer standard when adopted. Conduct listening session or otherwise solicit feedback from federal agencies on their use of e106 systems.
Agencies should identify and commit resources in inventorying their historic properties, including mapping historic properties, as appropriate, to ensure accurate GIS layers.	2	2		Digital Information Task Force	OFAP	ACHP staff will coordinate with FPISC on related GIS efforts.
Agencies should explore opportunities for partnerships and secure data sharing with SHPOs/THPOs/Indian tribes to augment their survey information and to better inform nonfederal project planning on or around federal lands/facilities.	2	2	NCSHPO NPS	Digital Information Task Force	OFAP	
Agencies should fully integrate historic property information into agency asset/property management databases.	2	2			OFAP	

Recommendation	Finding #	Priority Within Finding	Partner Agencies	Cross Over	ACHP Office	Anticipated next steps
Agencies can promote traditional trades training by introducing corps members to the traditional building trades and providing training.	3	1	NPS	Traditional Trades Training Task Force	OPI OCEO	
Federal agencies receiving funds through the Great American Outdoors Act should use the funds for traditional trades training, to address an immediate need for traditional trades craftspeople to complete deferred maintenance projects and to achieve a lasting positive impact on the shortage of these skill sets.	3	1	NPS USFS Other recipients as appropriate	Traditional Trades Training Task Force	OPI	Prioritize outreach to agencies in coordination with PTTTF.
Federal agencies should maximize the use of conservation and preservation corps in service projects to address recreation, conservation, disaster response, and other needs, including preservation to address historic preservation needs on public land.	3	2		Traditional Trades Training Task Force	OFAP OPI	

Agencies should identify opportunities to improve coordination, collaboration, and support for the role of State and Tribal Historic Preservation Officers as key federal partners in carrying out their NHPA responsibilities.	3	3			OFAP OPI	
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Recommendation	Finding #	Priority Within Finding	Partner Agencies	Cross Over	ACHP Office	Anticipated next steps
The ACHP should continue outreach to federal agencies, industry, state, and tribal officials, and other key stakeholders to identify and implement opportunities for improving the efficiency of Section 106 reviews and better coordinate review timing for infrastructure projects on federal lands or property while promoting effective historic preservation outcomes.	4	1	FPISC		OFAP	ACHP staff will participate in FPISC tribal initiative. Ongoing ACHP training activities.
The ACHP should examine steps it can take to improve the process of program alternative development with particular attention to the engagement of nonfederal stakeholders.	4	1			OFAP	Implement recommendations of Program Comment Review Panel when its work is complete.
Federal agencies and the ACHP should collaborate on refining programmatic approaches wherever they are considered.	4	2			OFAP	

Recommendation	Finding #	Priority Within Finding	Partner Agencies	Cross Over	ACHP Office	Anticipated next steps
Federal agencies should ensure all staff are aware, and act in accordance with, government-wide and agency policies and directives regarding tribal and NHO consultation.	5	1			ONAA OFAP	
Federal agencies should ensure all appropriate staff receives recurring training in environmental and cultural resource/historic preservation responsibilities and tribal and NHO consultation.	5	1			ONAA OFAP	Ongoing ACHP training activities.
Federal agencies should ensure Indian tribes and NHOs ascribing significance to properties on federal land or that could be affected by federal property management activities have the opportunity to inform programmatic approaches to maintenance, management, and planning activities.	5	1			ONAA OFAP	

Recommendation	Finding #	Priority Within Finding	Partner Agencies	Cross Over	ACHP Office	Anticipated next steps
The ACHP should work with federal agencies that manage scientific and technical facilities to update the Section 106 guidance for highly scientific and technical facilities.	6	1	NASA DOE NIST DoD NSF Potentially others		OFAP	Convene working group; review guidance draft.
Federal agencies should explore the use of program alternatives to establish strategies to enable the ongoing use of scientific and technical facilities while encouraging preservation of their significant components to the extent possible.	6	2			OFAP	NASA program alternative development as future case example; consider adapting successes profiled in 2021 report for wider publicity.



LEVERAGING FEDERAL HISTORIC BUILDINGS WORKING GROUP Office of Federal Agency Programs

Background. On February 15, 2018, the ACHP conveyed its fifth triennial Section 3 Report to the President in accordance with Executive Order 13287 “Preserve America.” One of the 2018 report’s six findings was that “Fostering and encouraging the reuse of historic facilities by federal agencies or others creates cost-effective preservation outcomes.” Challenges relating to the reuse of federally owned historic facilities were also raised in earlier triennial reports.

The 2018 report committed the ACHP to surveying property management agencies to identify obstacles to “outleasing” historic properties to nonfederal partners under National Historic Preservation Act Sections 110 and 111, and led to former Chairman Aimee Jorjani establishing a Leveraging Federal Historic Buildings Working Group (Working Group) in October 2019. The Working Group includes representatives from six key federal agencies that manage significant and complex property holdings (General Services Administration [GSA], National Aeronautics and Space Administration, National Park Service [NPS], U.S. Department of Agriculture, U.S. Postal Service, and U.S. Department of Veterans Affairs [VA]), as well as representatives from the National Trust for Historic Preservation (NTHP) and the National Conference of State Historic Preservation Officers (NCSHPO).

Current Status. The former chairman convened the Working Group six times. Based on these meetings and the results of a federal agency survey that was circulated among the six federal agency members, the Working Group helped the ACHP publish a final report (https://www.achp.gov/sites/default/files/documents/2021-04/LeveragingReport_040221-Final.pdf) that includes recommendations and associated action items, best practices, and agency success stories. ACHP staff distributed the report to preservation partners as well as business (e.g., real estate, low-income housing, small business), nonprofit, and education publications. On the date of publication, the ACHP also posted a recently recorded Zoom interview (<https://www.youtube.com/watch?v=XtxDHdKEqqE>) regarding an award-winning VA outlease in Leavenworth, Kansas.

The report’s recommendations are the following: foster interagency coordination and administrative efficiencies; expand marketing and education; and incentivize outleasing policies. The recommendations and accompanying action items are designed to help agencies identify how to work with existing outleasing authorities, address financing challenges, and make informed decisions on when it may make better sense to retain historic buildings that are not needed in the near-term.

During the March 17 Federal Agency Programs Committee meeting, and in correspondence with Working Group members in early April, ACHP staff provided a draft list of prioritized action items (below) and requested input.

Top Priorities

- Coordinating with Office of Management and Budget (OMB) representatives to determine the potential for revisions to “Reduce the Footprint” guidance—now known as “The Strategy” (<https://www.whitehouse.gov/wp-content/uploads/2020/03/M-20-10.pdf>)—and to ascertain their

schedule and how the ACHP can engage with them on better accounting for the benefits of outleasing.

- Reaching out to NCSHPO to explore how State Historic Preservation Offices handle Section 106 and outleasing reviews, to see if there is an opportunity to streamline and avoid duplicative reviews.
- Starting discussions with GSA on how their outleasing program and GSA's Office of Real Property Utilization and Disposal (<https://www.gsa.gov/real-estate/real-estate-services/real-property-utilization-disposal>) could provide expertise and resources to other agencies.
- Starting discussions with GSA's Office of Government-wide Policy (<https://www.gsa.gov/about-us/organization/office-of-governmentwide-policy-overview>), the group which supports the Federal Real Property Profile, on improving accessibility of information for federal agencies.

Secondary Priorities

- Coordinating with the U.S. Department of Housing and Urban Development on affordable housing.
- Promoting combined use of tax credits.
- Improving accessibility of information for prospective lessees and partners.
- Pursuing issuance of an executive order encouraging outleasing.

Ongoing Priorities

- Incorporating outleasing recommendations into training.
- Participating in thematically relevant conferences and panel discussions. (A fall 2021 NTHP PastForward Conference proposal is pending.)

In response to Vice Chairman Rick Gonzales' recent suggestion that the ACHP look into metrics for outleasing, specifically the economic impact of outleasing on towns and municipalities, the Working Group's input was also requested on that subject. Other metrics for their consideration included: the developer's return on investment, agencies' deferred maintenance costs for outleased buildings, and quantities of affordable housing units developed via outleasing.

Action Needed. ACHP members should review the final report, as well as the draft list of prioritized actions above, and be prepared to offer comments at the business meeting. Member input on metrics ideas is also requested. Members may also provide written comments to Kirsten Kulis, the ACHP's NPS Liaison (kkulis@achp.gov), or Angela McArdle, the ACHP's VA Liaison (amcardle@achp.gov). Following the business meeting, specific members will be asked to assist the ACHP with implementation of the top and ongoing priorities, as noted in the report.

Attachment: Working Group Final Report (https://www.achp.gov/sites/default/files/documents/2021-04/LeveragingReport_040221-Final.pdf)

April 8, 2021



PROGRAM COMMENT REVIEW PANEL Office of Federal Agency Programs

Background. Program Comments are one of five categories of program alternatives available in the Section 106 regulations, “Protection of Historic Properties” (36 CFR Part 800) that offer federal agencies a way to tailor their historic preservation review procedures. Program Comments (36 CFR § 800.14(e)) allow the ACHP to issue comments on a program or class of undertakings in lieu of an agency undertaking Section 106 reviews on a case-by-case basis. The ACHP membership must vote to approve or decline to comment after a 45-day period following an agency’s submission of a formal request for a Program Comment.

While there has been a steady interest among federal agencies in establishing program alternatives since they were first made available by the Section 106 regulations issued in 1999, the ACHP is now seeing an unprecedented level of interest in the use of these flexibilities. Recognizing this expanded interest, former Chairman Aimee Jorjani formed a panel of ACHP members to carry out a review of the development and use of Program Comments in November 2020. The panel is led by Jay Vogt, and also includes Reno Franklin and Tony Costa, who is representing the Department of Veterans Affairs.

The panel is considering the successes and challenges key stakeholders have had in developing and using Program Comments and working with staff to identify actions the ACHP can take to improve their use as a tool for Section 106 review efficiency. The panel is also looking at what additional guidance could be provided on Program Comments and ways ACHP members can be engaged in the development process prior to a federal agency making its formal request for a Program Comment.

Update. The Program Comment Review Panel determined that additional information about member experiences in developing and implementing Program Comments would help inform its deliberations. In February, members were asked to respond to a series of questions about the strengths and weaknesses of Program Comments, stakeholder involvement, and ACHP member participation in the development process. Soon thereafter, a meeting of the Federal Preservation Officer Forum hosted by the Department of Veterans Affairs and Mr. Costa yielded additional information about the perception of the Program Comment development process among federal agencies. Over two recent meetings, panel members have analyzed and distilled these responses into an outline of procedural issues where feedback indicates improvements are needed for the benefit of proposing agencies, ACHP members who ultimately will be asked to vote on proposals, and stakeholders.

Issue areas where panel members are currently considering recommendations include clarifying and augmenting guidance about recommended preparatory steps for Program Comment development and helping federal agencies consider the pros and cons of various program alternative approaches for their needs. Panel members noted clear guidance is an important factor in ensuring federal agencies and ACHP staff and stakeholders have shared expectations for the development process. While the ACHP has posted questions and answers on developing Program Comments for many years, they have not been broadly publicized. Agencies could also benefit from expanded best practices and examples in this area.

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Improved guidance and resources for the development of Program Comment proposals could serve as the basis for addressing a second issue. That is, ensuring federal agencies receive clear feedback on the readiness of their proposals to move forward in the development process. Also that ACHP members and staff understand what steps an agency has taken to consult with State and Tribal Historic Preservation Officers, Indian tribes and Native Hawaiian organizations, and other stakeholders in the formulation of a Program Comment draft. Finally, the panel recognized the value of offering an opportunity for member comments on the substantive content of a Program Comment before it reaches the 45-day review period following a formal request. Constructive input on a draft can make proposing agencies aware of member concerns at a stage when revision can occur prior to a request, increasing the chances for success of a proposal once formally submitted.

Next Steps. The panel will consider member discussion during the business meeting as it works to finalize a set of recommendations to be presented to the ACHP vice chairman before the summer business meeting.

Action Needed. Panel members and staff will provide an overview of the panel's preliminary findings, and members will be asked to provide their views and recommendations on these findings to support the development of final recommendations to the vice chairman.

April 8, 2021



SAVE OAK FLAT ACT Office of Preservation Initiatives

Background. Having recently issued formal comments to the Secretary of Agriculture on the Resolution Copper mining project and associated land exchange following the ACHP's termination of consultation on this undertaking, members have become familiar with the project and its potential impact upon the Chí'chil Bildagoteel Historic District, known also as Oak Flat. The recent introduction of legislation regarding the project provides a related opportunity for ACHP members to consider and potentially address further the project's impacts on historic properties.

Fundamental to the project proceeding is the congressionally mandated land exchange whereby copper-rich land in Arizona's Tonto National Forest is to be transferred by the U.S. Forest Service to Resolution Copper Mining, LLC, in exchange for land owned by the company. The first bill calling for such an exchange was introduced in Congress in 2005. Variations continued to be introduced through 2013. Then, in 2014, the provisions of the bill were included in the proposed Carl Levin and Howard P. "Buck" McKeon National Defense Authorization Act (NDAA) for FY 2015. The annual NDAA that funds the military is a classic "must pass" bill that is vitally important for Congress to enact, and it became [Public Law 113-291](#) with the Resolution Copper land exchange provisions included as Section 3003.

Save Oak Flat Act. Six months after the FY 2015 NDAA became law, the Save Oak Flat Act was introduced to repeal Section 3003. With variations, the bill has been reintroduced in each Congress since. In March 2021, the bill was reintroduced in the Senate and House as S. 915 and H.R. 1884. To date, only the [text of the House bill](#) is available.

The House bill would repeal Section 3003 and also would withdraw Oak Flat from future disposal or use for mining or geothermal leasing. However, the bulk of the bill consists of a series of introductory findings. They characterize a number of issues, including the scope of the proposed mining activities and the impacts to Oak Flat; the removal of Native Americans from the Oak Flat area in the 19th and early 20th centuries; the process for including Section 3003 in the NDAA, alleging a lack of a proper and transparent legislative process; the impact of federal policies on Indian lands, culture, religions, and sacred sites; the dichotomy between federal tribal consultation responsibilities and the mandatory requirement for the land exchange; alleged circumvention of environmental review processes; and the negative precedent set by Section 3003 for legislative process and federal Indian policy.

ACHP Support for a Legislative Solution. During Section 106 consultation on the Resolution Copper project, the ACHP did not take a formal position on the Save Oak Flat Act, or any particular bill for that matter. The ACHP has already conveyed its formal comments to the Secretary of Agriculture on that project and should now consider whether it would want to advise Congress regarding the bill.

As members may recall, the [ACHP's formal Section 106 comments](#) to the Secretary of Agriculture include the following recommendation:

USDA should work with the Administration and Congress to take immediate steps to amend or repeal the legislation directing the transfer or otherwise prevent it from happening as proposed.

The ACHP urges the [Forest Service] to explore directly with the Administration and Congress, and in consultation with other stakeholders, any and all opportunities to amend or repeal the exchange portion of the NDAA. It is evident that legislative action in this situation to stop this exchange would provide the most complete and appropriate protection of Oak Flat and the hundreds of other historic properties that stand to be affected by the transfer and subsequent mining activities.

In light of this recommendation, the ACHP should consider whether to convey its support for the recently introduced Save Oak Flat Act bill. In doing so, members should pay close attention to key elements included in the bill, some of which may not be congruent with the ACHP's Section 106 comments on the project. For example, the finding that Section 3003 circumvents environmental reviews is not consistent with the fact that the Section 106 process proceeded and will be complete upon the Secretary of Agriculture's consideration of and response to the ACHP's formal comments. Other findings may require knowledge of circumstances that the ACHP was not privy to, such as the details of the legislative process that led to inclusion of Section 3003 in the NDAA. Given such issues, the ACHP potentially could choose to support only those portions of the bill that address repeal of Section 3003 and protection of Oak Flat from future disposal or development. This would be a logical and consistent extension of the position the ACHP already conveyed to the Secretary of Agriculture supporting amendment or repeal of the legislative mandate for the land exchange.

Questions of Timing. It is not clear when or if the bill will move in Congress, and there is no official Statement of Administration Policy on the bill from the Biden Administration. The land exchange is now in abeyance since the Forest Service's rescission of the Final Environmental Impact Statement (FEIS) for the project. However, absent repeal of Section 3003, the eventual reissuance of an FEIS will restart the statutory timeline for completing the land exchange. All these factors make both the timeline for the Save Oak Flat Act bill and the optimal timing for any ACHP action on the bill unpredictable.

Action Needed. While it may be premature to formally vote on whether to support this legislation, the members should discuss the issues highlighted above regarding the Save Oak Flat Act and consider whether supporting at least some of its provisions might be considered once the House and Senate bills are reconciled. A vote on the legislation at the meeting is not anticipated. However, depending on the trajectory of the bill's movement, a subsequent vote on a motion regarding the bill could take place through a later unassembled meeting or at a future business meeting.

April 8, 2021



ENGAGING YOUTH AND BUILDING A MORE INCLUSIVE PRESERVATION PROGRAM **Communications, Education, and Outreach Committee**

Background. The Office of Communications, Education, and Outreach (OCEO) received a variety of comments and suggestions during the committee briefing on Building a More Inclusive Preservation Program. Expanding on the input from members, staff would benefit from additional feedback on appropriate outreach to more diverse communities, as well as outreach to young people.

In 2016, under the leadership of former CEO Committee Chairman Robert Stanton, ACHP members voted to adopt a Youth Strategic Plan <https://www.achp.gov/sites/default/files/2018-06/youth-strategic-plan-2016.pdf>. The work that followed was designed to engage the next generation of preservationists in historic preservation. The Youth Strategic Plan "...promotes active engagement of youth into the national historic preservation movement...[in order to] create a stronger preservation ethic among all Americans and promote more widespread appreciation of the importance and benefits of historic preservation as well as offering more opportunities to young people."

Research shows that reaching young people is important both for the causes they are engaged in and for young people themselves. Youth engagement is linked to positive outcomes for young people, adults, agencies, and communities. Among other things, youth engagement increases self-esteem, builds new relationships, increases coping mechanisms, and strengthens resilience.

Current Status. In many ways, Engaging Youth in Historic Preservation is complementary to the ACHP's efforts to build a more inclusive preservation program. These are both timely issues and were commented on broadly in the last member briefing. Both of these initiatives fall clearly under the purview of the ACHP as called for in the National Historic Preservation Act, which states that the duties of the ACHP include training and education in the field of historic preservation.

Feedback from members during the recent committee meeting included suggestions to introduce students in high school and middle school to preservation topics. There were also suggestions on the need to reach students from Historically Black Colleges and Universities and Minority Serving Institutions. There may also be additional opportunities to engage various congressional committees on such efforts. This is an outreach avenue that the ACHP needs to expand, as noted by members.

Next Steps. During the business meeting, members will hear from staff about several efforts underway, connecting the goals of youth engagement to the goals of building a more inclusive preservation program. These efforts include a new series of webinars that began on March 31, 2021.

ACHP staff will provide an overview of the webinar series during the CEO discussion. In an effort to expand the ACHP's offerings, OCEO wants to build upon member suggestions to reach secondary students and create avenues to involve them in programs and projects.

In addition, following an initial suggestion from Vice Chairman Rick Gonzales and CEO Committee Chairman Luke Nichter, OCEO is working on the possibility of creating an award dedicated to young people or youth groups, in partnership with National History Day.

ADVISORY COUNCIL ON HISTORIC PRESERVATION

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Action Needed. Members will be asked to provide guidance on additional actions that would further support efforts to engage young people, especially students of color, in FY2021 and beyond. Members will also be asked to consider such efforts in their own organization or agency and how the ACHP might work directly with them. These efforts might also include updating the 2016 Youth Strategic Plan to reflect current interests and priorities within the ACHP and the Biden Administration.

April 8, 2021



ACHP Members' Report

April 8, 2021

ACHP staff is pleased to provide the members with updates on key initiatives and ongoing work discussed in prior meetings. The ACHP continues to pursue these and other policy and program interests while it awaits the appointment of additional designees and representatives to the ACHP. Vice Chairman Rick Gonzalez will continue to perform the duties of the chairman while that position remains vacant, and Reid Nelson will continue to serve as the full-time acting executive director for the duration of his detail to the position. Questions about the status of these initiatives can be directed to Mr. Nelson or the respective office directors.

Policy and Legislation

Legislative Update

Since the 117th Congress began on January 3, a number of bills have been introduced that are of interest to the preservation community. Some would make positive contributions to protecting historic properties. Others pose challenges, particularly regarding the Section 106 process. Several key bills are discussed below, although none are deemed by staff as ripe for possible ACHP action at this time. A bill regarding the Resolution Copper mining project—the Save Oak Flat Act—is discussed in detail earlier in this meeting book.

The Revitalizing Economies, Housing and Businesses (REHAB) Act (H.R. 1483) focuses on promoting the rehabilitation of older buildings in urban areas. It would create a 15 percent tax credit for rehabilitation of buildings that are more than 50 years old, including adjacent development on the same block, provided that the project is within a half-mile of an existing or planned public transportation center. The bill also would allow for a bonus credit of 25 percent for the provision of affordable housing and public infrastructure.

Regarding the existing Historic Tax Credit (HTC) for National Register-eligible buildings, the Historic Tax Credit Growth and Opportunity (HTC-GO) Act (H.R. 2294) would enact a suite of temporary and permanent enhancements to the credit, some of which passed the House in the last Congress. The bill would temporarily increase the HTC from 20 percent to 30 percent through 2024, while establishing a permanent 30 percent credit for smaller projects of \$2.5 million and less. Other changes in the administrative provisions of the HTC would make it easier to pair it with the Low-Income Housing Tax Credit, expand the number of projects financially eligible to take the credit, and make the credit easier to use by nonprofits.

On February 26, the House passed the Protecting America's Wilderness and Public Lands Act (H.R. 803), which incorporates the text of the National Heritage Area Act (H.R. 1316). This bill would create and codify a National Heritage Area System to replace the current ad hoc establishment and oversight of National Heritage Areas. Various versions of such a bill have been introduced since at least 2002.

As occurred in the last Congress, the Republican members of the House Energy and Commerce Committee have introduced a package of bills to promote broadband deployment, and 10 of the bills call for exempting various broadband-related activities from review under Section 106 and the National Environmental Protection Act. It will be important to convey the ACHP's longstanding opposition to legislative exemptions should they become part of any broadband legislation backed by the Administration. Fortunately, the Office of Federal Agency Programs (OFAP) will be participating in an interagency working group chaired by the Office of Management and Budget (OMB) that is focusing

on the regulatory aspects of enhancing broadband access. This should provide an opportunity to explain the options for streamlining Section 106 review, hopefully decreasing the chances of a legislative exemption gaining traction.

A Section 106 legislative exemption is also proposed in the Clearing Lines along Electrical At-Risk Zones Act (H.R. 940). On public lands and National Forest System lands, the bill would exempt development of vegetation management, facility inspection, and operation and maintenance plans for electric transmission or distribution facilities from Section 106 review.

Late November is when the ACHP usually receives its budget passback, wherein OMB responds to the agency's budget request for FY 2022. When there is a change in Administration, the incoming Administration generally revisits passbacks and agency budget proposals before submitting a final proposed budget to Congress. Information about request levels is not public prior to the Administration sending its budget to the Congress, customarily in early February.

Traditional Trades Training

The Traditional Trades Training Task Force met on March 26, chaired by Vice Chairman Gonzalez. At his invitation, former ACHP Chairman Aimee Jorjani (who originally convened the task force) has joined the Task Force in her capacity as a private citizen with expertise in the subject. Also participating on the call was new Task Force Member Morris (Marty) Hylton III, Director of Historic Preservation and Associate Scholar at the University of Florida's College of Design, Construction and Planning. Updates were provided on the work of the [Campaign for Historic Trades](#), which is based on a partnership of Preservation Maryland and the National Park Service's Historic Preservation Training Center. Work is underway on development of a national survey of existing trades training programs and creation of a first-of-its-kind open-source historic trades training curriculum. Initial efforts also are underway to establish U.S. Department of Labor-registered apprenticeships for several historic trades specialties and historic structure maintenance.

Task Force members talked about options and opportunities for advancing traditional trades training in the Biden Administration. The group discussed how trades training is germane to several Administration priorities, including infrastructure, climate change and sustainability, and workforce development. With the return of community project funding—aka “earmarks”—in Congress, such funds might also be a source to tap for trades training programs or projects.

Section 106

Positive Train Control Program Comment Amendment

As detailed on the OneDrive for Program Alternatives in Development (https://achp-my.sharepoint.com/:f/g/personal/bsemmer_achp_gov/EtqHzsQvUa5Moi_A9DckA60B-bLJzgi495AzOuTVBSKBkA), the Federal Railroad Administration (FRA), Federal Communications Commission (FCC), and the ACHP have recently determined it would be appropriate to amend the Program Comment to Tailor the Federal Communications Commission's Section 106 Review for Undertakings Involving the Construction of Positive Train Control Wayside Poles and Infrastructure (PTC PC). While the statutory deadline for implementing PTC systems has passed, with FRA successfully meeting that timeframe, FRA has identified future lines that may be subject to the PTC system requirements. Accordingly, it would be useful for the PTC PC to still be in effect so they may avail themselves of the PC's efficiencies. ACHP staff has recommended an extension of five years, so the PC would be in effect until May 16, 2026.

In accordance with the existing PC's amendment stipulation, the chairman may amend the PC after providing written notification to the FCC, FRA, Association of American Railroads, American Public Transportation Association, American Short Line and Regional Railroad Association, National Conference of State Historic Preservation Officers, and National Association of Tribal Historic Preservation Officers. Those parties have been notified of the proposed amendment and are currently being provided an opportunity to comment, with that period scheduled to close within a week of the business meeting.

ACHP members will be able to share their observations and comments during the business meeting. Following that, ACHP staff will finalize the amendment for the vice chairman's signature. In accordance with the PC's amendment stipulation, the amendment is not required to be published in the *Federal Register*, although staff will publish the amendment on the ACHP's website and work with FRA and FCC to notify their stakeholders.

Training for Indian Tribes

The Office of Native American Affairs (ONAA) is nearing completion of the online, on-demand course called, *Introduction to Section 106 for Indian Tribes*. The course is part of a Section 106 toolkit under development by ONAA and will include training, guidance, and sample documents such as response letters. The course is currently going through final reviews and is scheduled to be launched later this month. In the interim, ONAA has been offering a two-part, live stream introduction to Section 106 for tribal staff. The most recent took place on January 12 and 13, 2021.

ONAA and OFAP offered a webinar on Section 106 agreement documents for Indian tribes on March 29 in conjunction with the annual To Bridge a Gap conference. This year's conference was co-hosted by Region 8 of the U.S. Forest Service and the Delaware Nation.

Program Alternatives Updates

OFAP continues to work with several federal agencies at various stages in the process of developing program alternatives. A comprehensive status report was provided in March, and summaries and other current information are always accessible to members at the program alternatives OneDrive folder: https://achp-my.sharepoint.com/:f:/g/personal/bsemmer_achp_gov/EtqHzsQvUa5Moi_A9DckA60B-bLJzgi495AzOuTVBSKBkA.

In March, the Navy provided a revised draft and template for the local consultation process for its development of a **nationwide Programmatic Agreement (nPA) for the Shipyard Infrastructure Optimization Program**. These updates addressed comments provided by the ACHP and others in January. The Navy's Shipyard Infrastructure Optimization Program (SIOP) will support the placement of facilities and major equipment to improve shipyard performance at Norfolk Naval Shipyard, Virginia; Portsmouth Naval Shipyard, Maine; Puget Sound Naval Shipyard, Washington; and Pearl Harbor Naval Shipyard, Hawaii, as well as other support facilities. The Navy proposes to expand the scope of the nPA to include any proposed undertaking at a public shipyard or support facility beyond SIOP-based projects. The ACHP is currently developing its comments and recommendations on this most recent draft.

Members should also be aware that the Forest Service is addressing comments on its draft **nPA for Phasing Large-Scale and Multi-Year Undertakings** and expects to provide a response to comments and a copy of the revised agreement this summer.

Outreach

Launch of Webinar Series

The Office of Communications, Education, and Outreach (OCEO) launched a new webinar series on March 31, 2021, titled *Preserve the Past, Build for the Future*. There are four webinars in the series, designed to bring students at Historically Black Colleges and Universities (HBCUs) into an awareness of historic preservation and the intersection of preservation to the careers of architecture, landscape architecture, urban planning, history, and other related fields.

The moderator for the series is former ACHP Expert Member Robert Stanton. So far, more than 90 participants have registered for at least one webinar. The audience for the first webinar was 46 people from a wide range of schools. It was clear that the information had been broadly disseminated, as a number of faculty and leadership at HBCUs asked to register. OCEO will discuss the webinar series at the business meeting, as another new way to engage youth and continue to build a more inclusive national preservation program.