



# ADVISORY COUNCIL ON HISTORIC PRESERVATION SUMMER BUSINESS MEETING

JULY 29, 2021



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ACHP Webinars



**MEETING**  
**ADVISORY COUNCIL ON HISTORIC PRESERVATION**  
**July 29, 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. Executive Director's Report
- III. Climate Change and Adaptation
- IV. Historic Preservation Policy and Programs
  - A. Legislation
  - B. Other Reports
- V. Section 106
  - A. Section 106 and Infrastructure and Surface Transportation Legislation
  - B. Implementation Status of Action Plans
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- VI. Native American Affairs
  - A. Other Reports
- VII. Communications, Education, and Outreach
  - A. Student Engagement Webinar Series
  - B. Other Reports
- VIII. New Business
- IX. Adjourn



**MEETING**  
**ADVISORY COUNCIL ON HISTORIC PRESERVATION**  
**ANNOTATED AGENDA**

- I. Vice Chairman's Welcome and Report. *Vice Chairman Jordan Tannenbaum will provide highlights of his recent activities on ACHP priorities including the America 250 Initiative and the White House Council on Native American Affairs.*
- II. Executive Directors Report. *The acting executive director will report on the status of President Joe Biden's nomination of Sara Bronin to the position of chairman and other organizational and recruitment news.*
- III. Climate Change and Adaptation. *Vice Chairman Tannenbaum will ask the committee chairmen to report on discussions within their committees about how the ACHP might assist federal agencies and other stakeholders in addressing the impacts of climate change and adaptation on historic properties. The members will consider the establishment of a task force on climate change. Possible action.*
- IV. Historic Preservation Policy and Programs
  - A. Legislation. *Preservation Initiatives Committee Chairman Rick Gonzalez will report on the committee's review and consideration of several specific bills with historic preservation implications. Possible action.*
  - B. Other Reports. *This will provide an opportunity for additional reports related to historic preservation policy and programs. No action.*
- V. Section 106
  - A. Section 106 and Infrastructure and Surface Transportation Legislation. *Federal Agency Programs Committee Chairman Jay Vogt will report on the committee's efforts to identify Section 106- related issues regarding infrastructure and surface transportation legislation and initiatives. Possible action.*
  - B. Implementation Status of Action Plans. *The members will receive a report on the status of efforts to implement action plans for the Section 3 Report, Leveraging Federal Historic Buildings Working Group, and Digital Information Task Force and be asked to provide input on further work. No action.*
  - C. Other Reports. *This will provide an opportunity for additional reports related to Section 106 issues. No action.*

VI. Native American Affairs

- A. Other Reports. *This will provide an opportunity for additional reports related to Native American affairs. No action.*

VII. Communications, Education, and Outreach.

- A. Student Engagement Webinar Series. *Communications, Education, and Outreach Committee Chairman Luke Nichter will report on the committee's discussion about expanding and advancing the ACHP's successful college student engagement webinar series and seek input from members on further priorities and opportunities. No action.*
- B. Other Reports. *This will provide an opportunity for additional reports related to Communications, Education, and Outreach. No action.*

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

IX. Adjourn. *The meeting will adjourn by 4 p.m.*



**FEDERAL POLICY ON  
CLIMATE CHANGE AND HISTORIC PROPERTIES**  
**Office of Preservation Initiatives**

**Background.** Historic buildings and neighborhoods, archaeological sites, and culturally important landscapes and places throughout the country are at risk from climate change impacts. While addressing climate change is a critical priority of the Administration and many Members of Congress, further and proactive efforts are needed to focus attention on cultural resource climate change issues. Given its unique charge to advise the President and Congress on historic preservation, it is important for the ACHP to consider how best to spotlight the impact of climate change on historic places during development of federal policymaking.

**Initial Outreach to the Administration.** [Executive Order 14008](#) “Tackling the Climate Crisis at Home and Abroad,” which was issued on January 27, sets forth foundational foreign and domestic policies to address the climate crisis and seeks to make addressing climate change a top priority for every federal agency. The ACHP has sent correspondence to Administration officials on the cultural resources challenges and opportunities of the following key initiatives of the executive order.

- [Creating a civilian climate corps](#)
- [Conserving at least 30 percent of America’s lands and waters by 2030](#)
- [Environmental justice](#)
- [Ensuring that 40 percent of key federal investments go to disadvantaged communities](#)
- [Prioritizing federal programs to support and revitalize the economies of coal and power plant communities](#)

These letters were conveyed early in the Administration to offer the ACHP’s initial views along with our offer to collaborate on addressing a number of preservation-related issues; they should be seen as a first step in establishing our interests but should be followed with further outreach, particularly once the ACHP’s chairman is confirmed.

**Advising Congress.** Congress also is examining climate change issues and introducing bills to address various aspects of the climate crisis. This provides another avenue for the ACHP to promote consideration of addressing climate impacts to historic properties. For example, ACHP action on bills to create a civilian climate corps is recommended in the meeting book paper, “Proposed ACHP Action on Pending Legislation” in Tab 1.

**Action Needed.** To assist in crafting a strategy for advancing consideration of historic properties in federal climate change policy, the Preservation Initiatives Committee should discuss the following questions (which other ACHP committees also have been asked to consider).

- What steps should the ACHP take to raise awareness within the Administration and Congress about the linkage between climate change and the protection of historic properties?

- What immediate steps should the ACHP take to further assist federal agencies and other stakeholders in developing policies and procedures that encourage the consideration of historic properties as part of their climate adaptation response planning?
- Should the ACHP take steps to more fully assess and identify key challenges and opportunities relating to climate change and historic properties? Should the ACHP establish a task force that might carry out this assessment and make recommendations to the members on strategic priorities going forward?

*Next Steps.* There will be possible action at the business meeting regarding the following: advising Congress on bills that would create a civilian climate corps; and recommendations for future actions based on discussion of the above questions, including whether the chairman should establish a task force on climate change and historic properties.

*July 14, 2021*



## **PLANNING FOR SECTION 106 RESPONSIBILITIES IN FEDERAL AGENCY CLIMATE CHANGE RESPONSE AND ADAPTATION ACTIVITIES**

### **Office of Federal Agency Programs**

**Background.** While the federal response to climate change has been ongoing for some time, the importance of expanding and accelerating these efforts is being highlighted by the Administration in its government-wide approach to addressing the climate crisis. The ACHP has had a longstanding interest in climate change and its implications for historic properties on both a policy and program level. The Federal Agency Programs Committee is positioned well to review and assess programmatic needs and opportunities to assist federal agencies as they respond to the climate crisis, and to support the effective and efficient application of Section 106 reviews to these efforts.

The broad nature of climate change response encompasses a number of areas in which the ACHP and other federal agencies have had ongoing involvement in Section 106-related matters. The following summary reviews some of the range of activities that might be considered to relate to climate change adaptation, mitigation, and response.

**Disaster response, preparedness, and recovery.** To the extent that climate change contributes to natural disasters and emergencies such as flooding from storms, wildfires, and other severe weather events, federal agencies work to ensure that historic properties are considered in response and recovery actions. The ACHP has collaborated extensively with the Federal Emergency Management Agency (FEMA) to develop a suite of tools to carry out Section 106 reviews in emergency response and recovery situations. The FEMA Prototype Programmatic Agreement (2013) creates a framework for FEMA in developing statewide agreements to improve and expedite Section 106 compliance for disaster recovery activities. Such agreements are currently in place in 47 states. The ACHP also worked with FEMA and several other federal agencies in the establishment of the Unified Federal Review process (2014) for environmental and historic preservation reviews for disaster recovery projects, reducing duplication of effort and increasing coordination to accelerate the delivery of federal assistance to communities in the wake of disasters. As natural disaster risks and threats evolve, these tools may serve as a basis for other measures to expedite consideration of historic properties in emergency scenarios.

**Emergency provisions.** The ACHP routinely advises consideration of an emergency stipulation in Memoranda of Agreement (MOAs) and Programmatic Agreements (PAs). Federal agencies may need to be increasingly cognizant of where the likelihood of storms, floods, wildfires, and other severe weather emergencies is increasing and plan accordingly to incorporate provisions allowing for expedited consultation when emergencies could impact project implementation, even if the undertaking is not directly related to climate change adaptation. In addition to specifying shorter turnaround times for responses from parties to the agreement, such stipulations can tailor communications preferences and specify points of contact to help federal agency staff to reach consulting parties in the event of an emergency. Agencies developing program PAs may wish to consider more detailed emergency provisions or the development of a historic preservation element for broader emergency response plans.

**Climate adaptation and siting.** The effects of climate change can also be observed in the course of slower natural changes, including coastal inundation and erosion, melting permafrost, and temperature shifts.

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These effects may have particular relevance for the managers of federal lands and facilities that are affected by the changing landscape, prompting consideration of mitigation approaches or even the relocation of federal facilities. These are concerns that can be discussed in consultation when an agency makes programmatic decisions about its historic property stewardship.

**Renewable energy expansion.** Federal agencies are also involved in activities intended to reduce causes of climate change, such as the development of renewable energy projects located on federal land or licensed or permitted by federal agencies. The ACHP has been involved in past efforts to develop strategies for locating facilities efficiently and in a way that avoids unnecessary adverse effects to historic properties, such as working with the Bureau of Land Management on the development of the Desert Renewable Energy Conservation Plan. Growing interest in the establishment of offshore wind farms requiring review by the Bureau of Ocean Energy Management has led to the ACHP's involvement in interagency coordination for a group of such projects as a member of the Federal Permitting Improvement Steering Council's FAST-41 process. Renewable energy development is an area of infrastructure build out that may be suited to the creation of other programmatic approaches to tailor Section 106 reviews to the particular characteristics of such projects.

**Sustainable design in federal undertakings.** In applying the *Secretary of the Interior's Standards for the Treatment of Historic Properties* for adaptation of historic buildings and structures to risks such as increased flooding in coastal areas, federal agencies work to preserve a historic property's defining features. New guidelines from the National Park Service (NPS) Technical Preservation Services on flood adaptation in rehabilitation projects are one example of recently developed tools that can assist agencies in avoiding adverse effects from such projects. Additional guidelines from NPS on sustainability and the use of the *Standards* treat projects aimed at increasing energy efficiency. The ACHP reported on Sustainability and Historic Federal Buildings in 2011. While the Executive Order that prompted the report is no longer in effect, the information remains relevant to decisions federal land and property managers may need to make as they work to increase the energy efficiency and resilience of their portfolios.

**Action Needed.** The full membership will consider how the ACHP might assist the Administration in integrating historic preservation issues into its various climate initiatives and what the ACHP should do through its own initiatives. Members are asked to come to the committee meeting prepared to share information about how their organizations are taking action in response to climate change and how this issue is shaping particular federal programs. They should also consider how the ACHP can assist other agencies in ensuring historic properties and cultural resources are considered in activities adapting to or aiming to reduce the effects of climate change. Specifically, members are asked to consider the following:

1. What steps should the ACHP take to raise awareness within the Administration and Congress about the linkage between climate change and the protection of historic properties?
2. What immediate steps should the ACHP take to further assist federal agencies and other stakeholders in developing policies and procedures that encourage the consideration of historic properties as part of their climate adaptation response planning?
3. Should the ACHP take steps to more fully assess and identify key challenges and opportunities relating to federal agency consideration of climate change and historic properties? Should the ACHP establish a task force that might carry out this assessment and make recommendations to the members on strategic priorities going forward?

**Next Steps.** Committee members will discuss the questions above in preparation for bringing advice and views from the Federal Agency Programs Committee perspective to general discussion of this topic in the business meeting.

July 14, 2021



## TRIBAL CLIMATE RESILIENCE DISCUSSION PAPER

Office of Native American Affairs and Office of Federal Agency Programs

**Background.** In view of the impacts Indian tribes are facing from increasing annual natural disasters including wildfires throughout the west and coastal and river flooding throughout the U.S., the Native American Affairs Committee, during its October 2020 meeting, determined that the ACHP should consider developing recommendations regarding ways in which federal agencies could assist Indian tribes with emergency preparedness. Since the National Association of Tribal Historic Preservation Officers (NATHPO) issued a report in March 2017, *Emergency Preparedness in Indian Country and Tribal Preservation Planning Needs: Recommendations and Resources for Tribes and Other Stakeholders*, the committee tasked staff with reviewing the report for potential recommendations the ACHP could advance. The report is available here: <http://www.nathpo.org/wp-content/uploads/2016/03/NATHPO-REPORT.pdf>.

The committee discussed the issue again in the June committee meeting at the same time the Preservation Initiatives and Federal Agency Programs Committees were discussing how the ACHP might address climate impacts on historic properties in general and what role the ACHP might play. In regard to addressing tribal climate resilience, the ACHP is a member of the White House Council on Native American Affairs (WHCNA) and participates in the WHCNA's Climate Change, Tribal Homelands and Treaties Committee. Therefore, there are opportunities to advance the protection of historic properties of religious and cultural significance to Indian tribes through the WHCNA.

**NATHPO's Report.** The premise behind the report is that to meet the objective of protecting tribal cultural resources, tribal emergency responders, Tribal Historic Preservation Officers (THPOs), and tribal cultural stewards need to be fully integrated into the National Planning Frameworks, i.e., the National Response Framework (NRF) and the National Disaster Recovery Framework (NDRF). These frameworks guide how the federal government responds to disasters and handles disaster recovery. In implementing these frameworks, the Heritage Emergency National Task Force (HENTF), which is co-sponsored by the Federal Emergency Management Agency (FEMA) and the Smithsonian Institution, works to act as a conduit for information generated by these frameworks. HENTF is a partnership of 60 national service organizations and federal agencies including the ACHP, and assists parties in understanding how to prepare for disasters and identifying best practices for response and recovery efforts.

The report offers recommendations for both tribal governments and other stakeholders. This paper focuses on the recommendations for other stakeholders:

1. Include cultural resources in emergency management planning and response.
  - A. Establish a centralized point of contact. (HENTF or another centralized office could act as a coordinator for integrating cultural and historic resource protection in emergency planning)
  - B. Break down silos of communications.

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2. Include emergency planning in cultural resource programming and activities.
3. Increase access and availability of culturally relevant response, recovery, mitigation, and preparedness resources for tribal governments.
4. Support increased funding and equitable participation by tribes in funding programs and initiatives that support cultural resource integration in emergency management.

In addition to the recommendations above, NATHPO suggests that “Tribes need an expanded, consistent, and dedicated source of baseline funding to assist with the integration of emergency management and cultural resource protection at the Tribe.”

The report also identifies the Tribal Heritage Preservation Grants as an additional source of funding that can be used for emergency preparedness; however, these grants are limited. In 2016, for example, the total amount available was only \$250,000.

Another vehicle that can support tribal participation in Section 106 reviews for emergency response is a programmatic agreement among FEMA and individual tribes. Unfortunately, only 12 such agreements are currently in effect.

NATHPO also points out that another option is a special Historic Preservation Fund (HPF) appropriation for a specific purpose. In this case, special funding could be provided to THPOs through the HPF to build greater emergency response capabilities. It should also be noted that State Historic Preservation Offices have received special funding in the wake of disasters such as hurricanes.

**Discussion.** While HENTF provides extensive information to its members regarding potential disasters and response/recovery funding opportunities, it does not provide a conduit for direct interaction and coordination between Indian tribes and the federal agencies that are preparing for and responding to disasters. The Unified Federal Environmental and Historic Preservation Review (UFR) framework may be better suited to facilitating such interaction and integrating tribal interest in the federal response and recovery efforts.

The UFR Process was established on July 29, 2014, by the execution of a Memorandum of Understanding (UFR MOU) among 11 federal agencies, including the ACHP, that are routinely involved in the environmental and historic preservation (EHP) reviews associated with disaster recovery assistance following a Presidentially declared disaster.

While it is possible for the ACHP to advocate for modifications to the NRF and NDRF, it may be more productive to use the UFR as a vehicle for advocating the integration of tribal interests into disaster response and recovery. Therefore, there are existing mechanisms through which the ACHP could advance some of these recommendations.

Additionally, the Section 106 review process for individual agency actions as well as routine program reviews provide opportunities for the ACHP to advance tribal consultation as part of the early preparation for disasters by federal agencies and the integration of tribal traditional knowledge in such planning.

**Issues for Broader Consideration.** Given the climate crisis and the Biden-Harris Administration’s focus on addressing climate impacts, the full membership should consider how the ACHP might encourage the Administration to include historic preservation goals and challenges in its various climate initiatives such as America the Beautiful, as well as those actions the ACHP should take through its own initiatives. In

addition to the specific recommendations related to Indian tribes listed below, the members will be asked to consider the following:

- What steps should the ACHP take to raise awareness within the Administration and Congress about the linkage between climate change and the protection of historic properties?
- What immediate steps should the ACHP take to further assist federal agencies and other stakeholders in developing policies and procedures that encourage the consideration of historic properties as part of their climate adaptation response planning?
- Should the ACHP take steps to more fully assess and identify key challenges and opportunities relating to climate change and historic properties? Should the ACHP establish a task force that might carry out this assessment and make recommendations to the members on strategic priorities going forward?

**Potential Tribal-Focused Actions.** NATHPO's recommendations regarding additional funding for THPOs and Section 106 programmatic agreements between FEMA and individual Indian tribes could easily be supported by the ACHP. In fact, the ACHP has long acknowledged the need for additional funding for THPOs, which continue to be severely underfunded with little capacity to take on additional responsibilities like emergency response.

The ACHP has also long supported and advocated for the establishment of agreements between federal agencies and Indian tribes. In fact, the ACHP's regulations at 800.2(c)(2)(ii)(E) provide for Indian tribes to enter into agreements with federal agencies that specify how they will carry out Section 106 responsibilities. Members will be asked to offer their advice on how the ACHP might encourage the development of more of these.

The committee will be asked to comment on and consider endorsing the following recommendations in the context of the broader ACHP climate actions.

**Recommendation:** In conjunction with the next federal budget cycle, the ACHP should send a letter to the appropriate House and Senate committees supporting both an annual increase in funding for THPOs as well as a one-time funding boost to build emergency response capabilities. Additionally, the ACHP should recommend to the Administration through the WHCNA that these increases be included in its annual budget requests.

**Recommendation:** The executive director should send a letter to FEMA, Department of Homeland Security and Council on Environmental Quality (as the other members of the UFR Steering Group) suggesting that consistent with the UFR's Strategic Plan, additional efforts should be made to integrate tribes into UFR deployment during active disasters, and offering ACHP assistance in developing FEMA tribal agreements.

**Recommendation:** The executive director should recommend to HENTF and FEMA that they identify a centralized point of contact that would be responsible for assisting Indian tribes with preparedness and response as well as assisting FEMA with tribal consultation for emergency planning, response, and recovery.

**Recommendation:** The members should direct staff to develop a climate action plan that includes but is not limited to the following:

- Promoting the development of protocols between federal agencies and Indian tribes or Native Hawaiian organizations regarding how disaster mitigation measures and disaster response/recovery activities will be implemented;

- Advancing the incorporation of tribal or Native Hawaiian traditional land management practices, as appropriate, by federal land managers;
- Encouraging federal agencies to review existing programmatic agreements to ensure they include tribal or Native Hawaiian consultation regarding climate preparedness and response provisions;
- ACHP staff developing sample stipulations regarding tribal and Native Hawaiian involvement in climate action planning that may be included in programmatic agreements; and,
- An annual report to the members on the implementation of the action plan.

***Action Needed.*** Committee members should discuss the proposed recommendations and direct staff accordingly. Members should also discuss what Committee Chairman Reno Franklin should advance to the full membership during the business meeting on July 29.

*July 14, 2021*



## PROPOSED ACHP ACTION ON PENDING LEGISLATION Office of Preservation Initiatives

**Background.** With the advent of each new Congress, the membership generally votes upon a legislative agenda to set legislative priorities for the ACHP and provide a general sense of direction, establishing a framework for member action on individual bills over the two-year course of the Congress. General priorities tend to remain on the list from year to year, while others obviously change to reflect changing issues of concern.

Given that President Joe Biden has now announced his intent to nominate Sara Bronin as the next chairman of the ACHP, it would be premature for the membership to establish a legislative agenda for the 117th Congress pending her confirmation. However, in the interim it remains important that the ACHP continue to carry out its responsibility to advise Congress on historic preservation matters. Several bills currently pending in Congress are appropriate for member review and possible action. Staff is recommending that the members consider motions regarding these bills.

**Conservation Corps and Civilian Climate Corps Bills.** Six bills have been introduced that would enhance and expand upon current authorities for the use of conservation corps to assist in the management and protection of federal lands. Three of the bills would specifically address a priority of the Administration—creation of a civilian climate corps. As described in Executive Order 14008, a civilian climate corps would “aim to conserve and restore public lands and waters, bolster community resilience, increase reforestation, increase carbon sequestration in the agricultural sector, protect biodiversity, improve access to recreation, and address the changing climate.” Regrettably, however, none of these bills specifically includes measures to promote the protection of cultural resources as an eligible corps activity.

Executive Order 14008 calls upon the Department of the Interior to report to the National Climate Task Force on a strategy for creating a civilian climate corps. In a recent [letter to Secretary Deb Haaland](#), the ACHP encouraged consideration of how a civilian climate corps might assist in managing climate impacts on cultural resources. At historic properties, corps members potentially could undertake resilience projects, conduct vulnerability assessments, help to monitor climate impacts, and assist in documentation or recovery of information from properties in advance of unavoidable loss due to climate change. However, lack of specific legislative authorization for a civilian climate corps to address cultural resources could complicate or deter involved federal agencies from utilizing the corps for such projects.

Pending conservation corps bills include the following: [Civilian Climate Corps for Jobs and Justice Act](#) (S. 1244/H.R. 2670); [Civilian Climate Corps Act](#) (S. 1057/H.R. 2241); [National Climate Service Corps and Careers Network Act](#) (S. 1928); [Restore Employment in Natural and Environmental Work \(RENEW\) Conservation Corps Act](#) (S. 1370/H.R. 3220); [21st Century Conservation Corps Act](#) (S. 487/H.R. 1162); [Youth Corps Act](#) (H.R. 854). Rep. Joe Neguse (D-CO), chairman of the House Natural Resources Subcommittee on National Parks, Forests, and Public Lands, introduced two of the bills, the Civilian Climate Corps Act and the 21st Century Conservation Corps Act.

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The Administration has not issued a Statement of Administration Policy on any of the bills referenced above. However, the President's Budget calls for \$10 million to be spent over the next five years to mobilize a civilian climate corps.

Staff suggests that the Preservation Initiatives Committee consider recommending the adoption of the following motion:

**Moved that:** the ACHP supports addressing the protection of cultural resources through the work of climate corps and conservation corps; and directs the chairman to advise the Congress of this support and to urge inclusion of specific references to cultural resources in corps-related legislation.

***Surface Transportation Legislation.*** Current legislative authorization for the surface transportation program expires on September 30. This deadline, coupled with the importance of infrastructure development as an Administration priority, has resulted in the introduction of several major bills. These include the following: the [Surface Transportation Reauthorization Act](#) (S. 1931), [Surface Transportation Investment Act](#) (S. 2016), and the [Investing in a New Vision for the Environment and Surface Transportation \(INVEST\) in America Act](#) (H.R. 3684). The INVEST in America Act passed the House on July 1, but the Senate bills have not advanced to the floor for a vote, and differences between the House and Senate bills will have to be reconciled. Therefore, the timing and the trajectory toward final legislation is unclear. While these bills may continue to evolve, the ACHP should be prepared to weigh in on several preservation-related provisions that are likely to be parts of these bills.

- **Historic Preservation Fund.** An amendment to the INVEST in America Act made prior to the bill's passage by the House would permanently authorize the Historic Preservation Fund (HPF) and would double its funding cap to \$300 million. Current authorization for the HPF, which provides funding for State and Tribal Historic Preservation Officers and a number of competitive preservation grant programs, will end in 2023. The proposed increase in the funding limit would be the first in 30 years, although Congress has never previously appropriated the currently authorized \$150 million. (That may change for FY 2022; see the Update on Major Activities in Tab 5 for more details.) The HPF is a cornerstone of the national historic preservation program, and its permanent authorization and increased funding limit would be a significant milestone. Rep. Teresa Leger Fernández (D-NM), former vice chairman of the ACHP, introduced the amendment.
- **Section 106 and Railroad Rights-of-Way.** [Section 2310](#) of the Surface Transportation Investment Act would require the General Accounting Office (GAO) to conduct a review of the Section 106 process regarding railroad rights-of-way (ROW) as governed by the ACHP's 2018 Program Comment to Exempt Consideration of Effects to Rail Properties within Rail Rights-of-Way. The program comment details specific activities that are exempt from Section 106 review. It also provides an optional property-based approach with a process for incrementally identifying specific properties that would remain subject to future review and others that would not.

The GAO study would assess the efficiencies achieved through the Program Comment and identify inefficiencies. GAO would have one year to produce the report and then provide recommendations to Congress on any regulatory or legislative amendments needed to further streamline Section 106 compliance for rail ROW. The recommendations are to address the property-based approach and ways to improve the process "while ensuring that historical properties remain protected." During development of the report, GAO would be required to consult with the ACHP, the National Conference of State Historic Preservation Officers, the National Association of Tribal Historic Preservation Officers, the Department of the Interior, and

representatives of the railroad industry. Following release of the GAO report, the Department of Transportation (DOT) and the ACHP then would have six months to submit a report to Congress responding to GAO's recommendations.

Some representatives of the rail industry and Sen. Roy Blunt (R-MO) have raised concerns regarding the effectiveness of the existing Program Comment. While the ACHP has neither sought nor urged legislative action in this regard, such a review by GAO would offer an independent perspective that could be helpful moving forward. ACHP member support for the GAO study called for in Section 2310 would signal the agency's interest in pursuing the most effective and efficient review of rail ROW projects while also opening a door to engage with Senate staff on possible improvements to Section 2310. For example, the United States Coast Guard and the Corps of Engineers also often play a role in rail ROW environmental reviews, and requiring GAO to also consult those agencies would be helpful.

- **Transportation Alternatives Funding.** Both the Surface Transportation Reauthorization Act (Section 1109) and the INVEST in America Act (Section 1206) would reauthorize and increase funding for Transportation Alternatives projects. Known for many years as Transportation Enhancements, Transportation Alternatives are specific project types that expand travel choice, improve quality of life, and protect the environment. Transportation Alternatives funding can go to historic preservation and archaeology-related projects that are transportation-related. During the period of FY 1992 through FY 2020, \$1.925 billion of Transportation Enhancements/Transportation Alternatives funding was used for historic preservation projects. While recent use of Transportation Alternatives funds for preservation is not as high as it once was, \$40 million in preservation projects received Transportation Alternatives funding from FY 2014 to FY 2020.<sup>1</sup>
- **Context Sensitive Design.** As defined on the Federal Highway Administration website, context sensitive design is a "design process that not only considers physical aspects or standard specifications of a transportation facility, but also the economic, social, and environmental resources in the community being served by that facility."<sup>2</sup> The INVEST in America Act (Section 1107) would require that DOT ensure plans and specifications for highway projects take into consideration context sensitive design principles. The bill also would require DOT to publish guidance on context sensitive design, including best practices and model policies, to assist state and local governments. The provisions of Section 1107 obviously could promote the preservation of historic properties and potentially provide an opportunity for the ACHP to provide input to DOT on consideration of historic properties in the proposed new guidance.

The Administration has issued a Statement of Administration Policy in support of the INVEST in America Act. There are no Statements of Administration Policy on the two Senate bills. The ACHP has a multi-year history of contact with Congress regarding how to address Section 106 review in rail ROW. The ACHP also has previously advised Congress of its support for strengthening the HPF and for Transportation Enhancements/Transportation Alternatives.

Staff suggests that the Preservation Initiatives Committee consider recommending the adoption of the following motion:

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<sup>1</sup> Transportation Alternatives Data Exchange, [Transportation Alternatives Spending Report: Fiscal Years 1992–2020](#) (Rails-to-Trails Conservancy, 2021).

<sup>2</sup> Federal Highway Administration, [Context Sensitive Solutions and Design](https://www.fhwa.dot.gov/planning/css/what_is_css/), (https://www.fhwa.dot.gov/planning/css/what\_is\_css/).

**Moved that:** the ACHP supports current provisions in the Surface Transportation Reauthorization Act (S. 1931), Investing in a New Vision for the Environment and Surface Transportation (INVEST) in America Act (H.R. 3684), and the Surface Transportation Investment Act (S. 2016) relating to the HPF, the ACHP program comment on rail ROW, Transportation Alternatives funding, and context sensitive design; and directs the chairman to advise the Congress of this support.

***Historic Tax Credit Growth and Opportunity (HTC-GO) Act and Revitalizing Economies, Housing and Businesses (REHAB) Act.*** These bills would enhance federal tax benefits for the rehabilitation of older and historic properties.

The [HTC-GO Act](#) (S. 2266/H.R. 2294) would enact a suite of temporary and permanent enhancements to the existing Historic Tax Credit (HTC) for income-producing properties listed on or eligible for listing on the National Register of Historic Places. The bill would temporarily increase the HTC from 20 percent to 30 percent through 2024 (in response to COVID-19 economic disruption), 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. All of these changes would further augment the HTC's already considerable impact as a catalyst for the preservation of historic properties.

The [REHAB Act](#) (H.R. 1483) would create a 15 percent credit for the rehabilitation of buildings that have not been determined eligible for the National Register but that are more than 50 years old, provided that they are within a half-mile of an existing or planned public transportation center. A bonus credit of 25 percent would be available for expenses related to affordable housing and public infrastructure. In addition to promoting revitalization in older urban areas outside of certified historic districts, these credits also could support historic district vitality by promoting rehabilitation of older noncontributing buildings.

The Administration has not issued a Statement of Administration Policy on these bills. In the past, the ACHP has consistently and strongly supported 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. In 2019, the ACHP wrote to Congress to convey its support for the HTC-GO Act as introduced in the last Congress, which was similar to the current version of the bill. A major difference in the two versions is inclusion of the temporary increase in the credit to address pandemic-related economic challenges.

Staff suggests that the Preservation Initiatives Committee consider recommending the adoption of the following motion:

**Moved, that:** the ACHP supports the Historic Tax Credit Growth and Opportunity (HTC-GO) Act (S. 2266/H.R. 2294) and the Revitalizing Economies, Housing and Businesses (REHAB) Act (H.R. 1483); and directs the chairman to advise the Congress of this support.

***Action Needed.*** Staff suggests that the Preservation Initiatives Committee consider recommending to the full membership the adoption of the three motions previously noted.

*July 14, 2021*



## SECTION 106 AND INFRASTRUCTURE AND SURFACE TRANSPORTATION LEGISLATION Office of Federal Agency Programs

**Introduction.** Improving and expanding the nation's infrastructure is an important goal for the current Administration and Congress. The ACHP has long been involved in and advised both on efforts to advance certain infrastructure sectors, but attention and focus on such efforts has dramatically increased in 2021 and now includes sectors not previously included in these discussions, such as broadband, housing, and clean energy.

Recognizing the clear implications that infrastructure development will have on historic properties, it is timely and important that the ACHP consider steps it might take to encourage the consideration of historic properties in policy development, early planning, and Section 106 reviews. The Preservation Initiatives Committee is already reviewing draft legislation to determine how the ACHP might comment on key preservation-related provisions in existing bills, including those that would provide permanent authorization and potentially higher investments in the Historic Preservation Fund, others on transportation enhancements, and issues relating to rail rights-of-way.

**Status.** The Federal Agency Programs Committee should consider whether the recommendations of the Digital Information Task Force (DITF) might also be advanced as part of any infrastructure legislation or package. For example, underscoring the importance of investments in improving GIS systems that include information about cultural resources may be worthwhile given the potential scope and size of potential infrastructure investments and the need to ensure individual projects are delivered in a timely fashion without undue effect to the environment. The ACHP may have opportunities to speak to this and other aspects of organizational and technological capacity needed to support the efficient and effective consideration of effects to historic properties relating to proposed infrastructure development.

A summary of legislation currently under consideration in Congress can be found in Tab 1. Given the evolving nature of the legislative process, an update will be provided to members on the status of these bills during the committee meeting. Coinciding with a similar review by the Preservation Initiatives Committee, ACHP staff will facilitate a discussion about further framing the ACHP's position and approach on advising the Administration and Congress on infrastructure-related initiatives, as well as advising member agencies on appropriate Section 106 compliance strategies.

**Action Needed.** While funding and program details are still to be determined, members are asked to participate in a discussion about how this level of investment will impact their programs and raise Section 106 challenges and opportunities. The following questions are offered to facilitate the discussion:

- What do ACHP members, especially those federal members engaged in infrastructure project planning and approvals, see as the greatest challenges with Section 106 reviews relating to infrastructure development? Are program alternatives or other improvements specific to certain sectors of infrastructure development anticipated to be expanded (e.g., transportation facilities, renewable energy development and transmission, telecommunications, etc.) needed?

ADVISORY COUNCIL ON HISTORIC PRESERVATION

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- How could the ACHP help encourage support for digital tools and resources, including those managed by states and tribes, to facilitate the identification of historic properties and assessment of effects to them?
- Do federal agencies have the resources and capacity to consult with affected and interested communities about effects to historic properties from increased infrastructure development? Are there steps that the ACHP can take to assist agencies and communities?
- In recent years, the ACHP has provided enhanced and focused information regarding the Section 106 process for infrastructure projects to practitioners and applicants such as dedicated web pages and the lead federal agencies FAQ. How can this information be improved?

*Next Steps.* Federal Agency Programs Committee members will be asked to provide input on these matters and then report to the membership during the business meeting on steps the ACHP can take to support both the delivery of infrastructure projects as well as the protection of historic properties that may be affected by them.

*July 14, 2021*



**IMPLEMENTATION STATUS OF ACTION PLANS FOR SECTION 3 REPORT,  
LEVERAGING FEDERAL HISTORIC BUILDINGS WORKING GROUP, AND DIGITAL  
INFORMATION TASK FORCE  
Office of Federal Agency Programs**

**Background.** The ACHP’s Digital Information Task Force conveyed its [final report and action plan](#) to the ACHP chairman in March 2020. The 2021 report prepared pursuant to Section 3 of Executive Order 13287, “Preserve America,” [In a Spirit of Stewardship: A Report on Federal Historic Property Management 2021](#), was delivered to the President on February 16, 2021, and ACHP members provided input on prioritization and coordination for an implementation plan during the spring business meeting in April. The ACHP’s Leveraging Federal Historic Buildings Working Group issued its [final report](#) in April for which an implementation plan was similarly developed with member input this spring.

The 2021 Section 3 report significantly integrated recommendations from the Digital Information Task Force Action Plan and the conclusions of the Leveraging Federal Historic Buildings Working Group. Therefore, there is a close relationship between efforts to advance recommendations within all three recent reports. Each of these three reports included major policy recommendations and commitments both among ACHP staff and leadership, as well as other agencies and partners.

**Update.** Recognizing the importance of these action plans and the need for member involvement in implementing certain actions, staff is committed to keeping the members updated and engaged as implementation progresses.

The ACHP’s efforts to fulfill the recommendations in these reports have shifted to carrying out implementation activities in coordination with both federal and nonfederal partners. The following update summarizes actions taken to date and work the ACHP staff is currently involved with to accomplish report objectives.

**Digital Information:** The ACHP has worked with a variety of stakeholders, including the National Conference of State Historic Preservation Officers NCSHPO, the National Park Service (NPS), and cultural resources consultants, on report recommendations over the last year. Notably, staff led a listening session with attendees at the 2020 American Cultural Resources Association conference about e106 systems and participated in a session at the 2020 PastForward conference to raise awareness about the value of digital tools and GIS mapping to preservation planning. Staff continues to monitor and participate in the development of cultural resource spatial data transfer standards by the Cultural Resources Subcommittee of the Federal Geographic Data Committee (FGDC), an effort led by the NPS. The ACHP, as a member of the Federal Permitting Improvement Steering Council (Permitting Council), has provided input for the Permitting Council’s initiative to explore the development of a government-wide geospatial platform to support the environmental review and permitting process and continues to monitor developments to ensure cultural resources data sources are brought to the attention of federal project planners and prospective federal applicants. Finally, staff has initiated coordination with NCSHPO’s Technology and Survey Strategies Committee on several action items related to understanding GIS needs and identifying resources to support their maintenance and enhancement.

Continuing work on the Digital Information Task Force’s action plan in the near term should include further coordination with NCSHPO on baseline GIS system features and cost information, outreach to Federal Preservation Officers and State Historic Preservation Officers (SHPOs)/Tribal Historic Preservation Officers on their use of e106 workflow systems, and participation in efforts by the FGDC’s Cultural Resources Subcommittee to address recommendations in the National Geospatial Advisory Committee Cultural Resources Subcommittee report on Protecting Federal Cultural and Geospatial Resources (2019). The ACHP will also compile best practices and examples shared throughout the Task Force’s work to support building awareness within the Administration and among policy makers about the value of digital cultural resources information in infrastructure project planning.

**Leveraging:** Staff is developing a letter to the General Services Administration (GSA) regarding one of the report’s primary recommendations: to foster greater interagency coordination and administrative efficiencies by working with GSA to establish a “Center of Outleasing Excellence” to promote outleasing. In the coming weeks, ACHP staff will be reaching out to NCSHPO regarding opportunities for avoiding duplicative reviews with SHPOs, to the National Trust for Historic Preservation’s Community Investment Corporation regarding promoting combined use of tax credits, and to the Department of Housing and Urban Development on encouraging use of historic federal buildings for affordable housing. Finally, ACHP staff has provided a brief training on the report’s findings, upon request, to the Department of Energy and is pursuing participation in relevant conferences and panel discussions.

This fall, the ACHP plans to reach out to the Office of Management and Budget to pursue revisions to the National Strategy for the Efficient Use of Real Property (formerly known as “Reduce the Footprint”) and federal budget scoring policies.

**Section 3:** Several recommendations in the Section 3 report echo those of the Leveraging Working Group, under Finding #1 of the report, and the Digital Information Task Force’s action plan under Finding #2. Work on these elements is proceeding as described above. Regarding improving the efficiency of Section 106 reviews and better coordinating review timing for infrastructure projects on federal lands under Finding #4, ACHP staff members are participating in the Permitting Council’s current initiative to develop resources to help Permitting Council member agencies facilitate enhanced engagement with tribal governments on large-scale infrastructure projects such as those using the FAST-41 process. The ACHP’s Program Comment Review Panel, which is formulating recommendations for the vice chairman now concerning improvements to the development of these program alternatives, is advancing another recommendation under Finding #4, and implementation of the panel’s recommendations is expected to be a focus of efforts on this item through the remainder of 2021.

Ongoing work of the Office of Native American Affairs, including the development of information papers and training resources, supports the ACHP’s efforts to ensure the meaningful and timely involvement of Indian tribes and Native Hawaiian organizations in federal agency property management activities per Finding #5. Finally, the ACHP has recently launched a staff working group and is contacting Federal Preservation Officers, facility cultural resources managers, and others to update the ACHP’s guidance on Section 106 reviews involving highly technical and scientific facilities.

**Action Needed.** Members are asked to provide feedback on progress in the implementation of these three reports, especially concerning any current opportunities they see for their agencies or organizations to participate in furthering the recommendations.

- Are there program, policy, or legislative opportunities to advance the action items in this suite of reports of which the ACHP should be aware?
- Do members have suggestions for steps the ACHP can take in the near term to advance specific recommendations?

July 14, 2021



## **ACHP WEBINARS**

### **Office of Communications, Education, and Outreach**

**Background.** Having recently completed a four-part seminar about historic preservation, the ACHP is exploring the launch of a full-time webinar series. During the COVID-19 pandemic 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 were four webinars in the series, designed to bring students at Historically Black Colleges and Universities (HBCUs) and other students at Minority Serving Institutions (MSIs) into an awareness of historic preservation and the intersection of preservation to careers such as architecture, landscape design, urban planning, history, and other related fields.

There is no doubt that 2020 and the beginning of 2021 brought about a sea change in how organizations, and federal agencies handle outreach, education, and training. With suggested mandates in place to remain at home, there was a switch from in-person meetings, trainings, and outreach to virtual platforms.

According to ON24, a leading cloud-based digital experience platform, in March 2020, it was noted that the number of webinars hosted on its platform jumped by more than 330 percent, and the number of attendees to these events doubled year-over-year.

ACHP staff believes that this change will continue and even grow over the coming years. Not only do webinars prove to be more convenient for many people, lower overall delivery costs also make online communications more attractive.

Staff suggest that webinars become a permanent part of ACHP outreach. These would be separated from the training webinars offered by the Office of Native American Affairs and the Office of Federal Agency Programs. The ACHP is currently seeking interns through the Department of State's Virtual Student Federal Service to help produce a similar webinar series for the 2021-22 school year.

**Questions for Discussion.** At the July CEO committee meeting, members will be asked to weigh in on **logistics** (should webinars be limited to the school year), **audiences** (current webinars are directed to students and some faculty), **topics of interest** (partnership opportunities with preservation partners might provide more content), and **participants** (OCEO would encourage ACHP members to participate in webinars, etc.).

In total, 304 people registered for the four webinars. Students from a wide variety of HBCUs attended including Alabama A&M, Jackson State, Stillman, Tuskegee, Hampton, Bowie, Morgan State, University of Maryland Eastern Shore, and Prairie View. Students from many other schools also attended, including Tulane University, Syracuse, Georgia State, University of Georgia, Indiana University, University of Houston, University of Texas, and Texas Tech.

In addition to students and faculty from colleges and universities, there were representatives of the Federal Railroad Administration and U.S. Agency for Global Media.

**Action Needed.** While it may be premature to make any final decisions in July, ACHP members should

discuss the topics in bold above during the ACHP business meeting and come to consensus on some of these items. As ideas are brought to the table, OCEO will bring a final proposal to the ACHP fall business meeting.

*July 14, 2021*