

**Proposed Exemption for Routine Maintenance and Operations as conducted by GSA
Meeting Notes
ACHP Tribal Consultation Meeting
Monday, November 7, 2022, 2:00 pm EST
ACHP Zoom Platform**

2:04 pm EST - Meeting officiated by Jordan Tannenbaum, Vice Chairman of the Advisory Council on Historic Preservation (ACHP).

Jordan introduced ACHP staff in attendance.

ACHP staff in attendance: Reid Nelson, Acting Executive Director; Chris Koeppel, Assistant Director of Federal Property Management, Office of Federal Agency Programs; Laura Lavernia, Program Analyst/GSA Liaison. Tannenbaum then acknowledged Beth Savage, GSA Federal Preservation Officer (FPO) and key GSA staff.

The floor was then opened to Tribal leaders for any opening remarks. Tribal representatives introduced themselves briefly.

Tribal representatives in attendance: Linzey Scott, Tribal Historic Preservation Officer, Walker River Paiute Tribe; Sunday Eisleit, Tribal Historic Preservation Officer, Salt River Pima-Maricopa Indian Community; Larry Samuel, Tribal Historic Preservation Officer, Pueblo of Tesuque; Karen Brunso, Tribal Historic Preservation Officer, Chickasaw Nation; Jerome Samuel, Pueblo of Tesuque; Kaila Akina, Cultural Resource Specialist, Gun Lake Tribe (Match-E-Be-Nash-She-Wish. Band of Pottawatomi Indians; Jeffrey Bendremer, Tribal Historic Preservation Officer, Stockbridge-Munsee Community (SMC); Larry Benallie, Tribal Historic Preservation Officer, Gile River Indian Community (GRIC); Walter Viar, attorney (sole practitioner), Santa Ynez Band of Chumash Indians; Anna Starkey, Cultural Regulatory Specialist, United Auburn Indian Community (UAIC); Natalie Forest-Perez, Tribal Historic Preservation Officer, Pit River Nation; Logan York, Deputy Tribal Historic Preservation Officer, Miami Tribe of Oklahoma; and Leonard Wabasha, Director of Cultural Resources, Shakopee Mdewakanton Sioux Community (SMSC).

NATHPO representatives:

Valerie Grussing, Executive Director, National Association of Tribal Historic Preservation Officers (NATHPO) was in attendance.

GSA Staff in attendance: Beth L. Savage, Federal Preservation Officer (FPO); Joan Brierton, Senior Historic Preservation Specialist; Natalie Loukianoff, Historic Preservation Specialist; and Chantal McKenzie, Historic Preservation Specialist

Opening Remarks

Reid Nelson gave opening remarks concerning the nature of the exemption and GSA's historic preservation program.

Beth Savage provided opening remarks and thanked staff members who have worked to develop the proposed exemption. Savage briefly recounted GSA's consultation process on the proposed exemption to date, noting that GSA had conducted two consultation meetings with State Historic Preservation Officers (SHPOs) and a Tribal listening session with Tribal Historic Preservation Officers (THPOs) and Tribal

representatives. She added that the current version of the exemption, circulated to participants in advance of this meeting, reflects the comments received and edits made throughout the course of consultation.

Presentation

Jordan Tannenbaum turned the floor to Chris Koeppel. Chris clarified that notes were being taken and would be sent, along with a copy of the presentation, to all participants. While not a verbatim transcription of the conversation, participants are encouraged to send any corrections or additions to Laura Lavernia at llavernia@achp.gov.

Presentation clarified where GSA is in the consultation process. GSA has submitted a revised exemption draft along with a formal proposal to ACHP on October 14, 2022, and gave the ACHP an extended review period from the statutory 30 days to 90 days to vote on the proposed exemption. Per 36 CFR 800.14(c)(4), ACHP is to conduct Tribal consultation on an exemption proposal if such proposal is determined by ACHP to have the potential to affect historic properties on Tribal lands or historic properties of religious and cultural significance to Tribes or Native Hawaiian Organizations (NHOs). Consultation conducted by the ACHP is to constitute official government-to-government consultation with Tribes and NHOs. ACHP used same presentation GSA formerly utilized for consultation meetings in order to ensure consistency.

The presentation clarified the regulatory authority and intent of exempted categories (exemptions) and the Criteria for establishing exemptions under 800.14(c)(1):

- the actions within the program or category must qualify as “undertakings” subject to 106;
- the potential effects of the undertakings within the program or category are foreseeable and likely to be minimal or not adverse; and
- exemption is consistent with the purposes of the National Historic Preservation Act.

The foundation for the exemption is GSA’s strong preservation program—its policies, personnel, and practices. Koeppel explained GSA’s preservation program, explaining the role of Regional Historic Preservation Officers (RHPOs) and other preservation staff.

The activities proposed are those that fall under the category of maintenance; they are routine activities needed to keep a property functional and in a state of repair. There is an appendix of activities (Appendix A) that are subject to the exemption. The exemption only applies to properties under the care and custody of GSA and does not apply to Tribal lands.

For historic properties and spaces, the exempted categories are tied to the *Secretary of the Interior’s Standards for Preservation*, understanding that—as per the Criteria for Adverse Effect 36 CFR 800.5—activities not conducted in accordance with the Standards result in adverse effects. The Standard for Preservation is used as it is the only standard the ACHP feels meets the threshold for exemptions.

Koeppel explained how the exemption would treat archaeological concerns. **Exempted activities must avoid extant, documented archaeological resources. Archaeological sites must be preserved and maintained in place—this requirement is found in Section II of the exemption text.** Avoidance and preservation in place of archaeological sites is required in order to meet the *SOI Standards for Preservation*. If avoidance is not feasible or possible, the RHPO will initiate Section 106 Review under Subpart B of 36 CFR 800.

An “Unanticipated Discoveries” clause has been added to the exemption text (Stipulation III). This clause addresses ground disturbing activities: archaeological concerns human remains and sacred objects; and previously unidentified historic properties and character-defining features discovered during the implementation of an exempted activity. Stipulation III sets forth a procedure for GSA to initiate consultation with the appropriate parties, as necessary.

Questions and Answers

Anna Starkey, United Auburn Indian Community (UAIC), asked for clarification as to whether the exemption excludes cultural sites. ACHP staff responded that the exemption does exclude sites of religious and cultural importance to Tribes. Further, Ms. Starkey asked if the proposed exemption has language about its application to Tribal lands. ACHP Staff and GSA FPO responded in the affirmative and provided the proposed exemption text Stipulation II “Excluded from Exemption,” in the chat feature, which states, “e) This exemption does not apply on Tribal lands and does not involve any property under the custody and control of GSA identified as having religious and cultural significance to an Indian Tribe or NHO.”

Participants asked whether the proposed exemption text contained a discovery clause. ACHP Staff clarified Stipulation III of the proposed exemption text is an unanticipated discoveries clause. The Unanticipated Discoveries Clause takes Tribal concerns into account; the clause effectively “kicks out” a project from the exemption and requires the RHPO to consult under the standard Section 106 review process with the appropriate SHPO / THPO, and to initiate consultation with Tribes. ACHP Staff provided the text of Stipulation III in the chat feature for participants:

“Ground Disturbing Activities

Ground disturbing activities may have the potential to affect historic properties through unanticipated discoveries. Where previously undetected historic or cultural resources are discovered during implementation of exempted activities, GSA will proceed with one of the following:

- a. If a GSA Regional PA is in place to govern the unanticipated discovery, GSA shall follow the procedures outlined therein.
- b. For GSA regions without a Regional PA, if an unanticipated discovery is made during the implementation of an exempted activity, at any stage, work will stop immediately. The RHPO shall be notified within twenty-four (24) hours and the RHPO shall inform the corresponding SHPO/THPO, any Indian Tribe or NHO that may attach religious and/or cultural significance to the property, and the ACHP of the discovery within forty-eight (48) hours. Unanticipated discoveries will be handled as outlined in 36 CFR 800.13(b).”

Stipulation III continues with a clause discussing the treatment of human remains and sacred objects. If these are found at any time while undergoing the implementation of any exempted activity, GSA shall implement the unanticipated discoveries clause. In addition, GSA shall follow the applicable provisions in NAGPRA (25 UCS 3001).

Leonard Wabasha, Shakopee Mdewakanton Sioux Community, posed a question in chat: Would the GSA exemption pertain to ground disturbing activities? ACHP Staff responded that intact, previously documented, archaeological sites must be avoided. Ground disturbing activities are only to be conducted in previously surveyed and determined to have no eligible historic landscapes or archaeological resources. According to the *SOI Standards for Preservation*, archaeological sites must be preserved in place. If at any time the *Standards for Preservation* cannot be met, the GSA RHPO must initiate Section 106 review.

Anna Starkey, UAIC, requested that instead of using the term “previously disturbed” the text use terms like “known sterile soil” or “known fill” to delineate that there is no cultural affiliation. Karen Brunso, Chickasaw Nation, noted that those terms may not be accurate as some Tribes, such as a Chickasaw, do not recognize that the land ever loses significance because it has been disturbed.

- Anna Starkey, UAIC, provided UAIC’s recently prepared a Section 106 Best Practices the Tribe for when we consult with federal agencies as a resource. If interested, it is found here: <https://auburnrancheria.com/wp-content/uploads/2022/09/UAIC-Section-106.pdf>

Karen Brunso, Chickasaw Nation asked how the exemption was dealing with Fine Art, as many Federal buildings have significant works created by Native American artists. ACHP staff responded that the Exemption excludes the GSA Fine Arts Program. ACHP staff provided the language from proposed exemption Stipulation II “Excluded from Exemption”(d) which states that Fine Art is excluded exemption and is governed under GSA Policies and Procedures of the Fine Arts Program. As stated in the beginning of Stipulation II, excluded items from the exemption are subject to Section 106 review under 36 CFR 800 Subpart B.

Larry Benallie, Gila River Indian Community, asked how many other exemptions existed and if they functioned as expected. ACHP staff mentioned that there are only three exemptions approved and the EVSE exemption that was just approved. 1) Interstate highway System, 2) Natural Gas Pipelines Exemption, and 3) EVSE Exemption. ACHP clarified that exemptions are rare because the foreseeable minimal or no adverse effect standard sets a pretty high bar. The first two were functioning as expected, however as EVSE was just passed, no comment on its function could be made yet.

Valerie Grussing clarified that NATHPO Board did not support the EVSE exemption and mentioned that the Board would be sending comments on this exemption as well.

Beth Savage stated that GSA will consider all Tribal comments and recommendations on how to improve or clarify the exemption language to better address any concerns and that these should be submitted in writing and sent to Laura Lavernia at llavernia@achp.gov. All reiterated the December 9th deadline.