Fifty Years of Heritage

So Rich: The National Historic Preservation Act
The Advisory Council on Historic Preservation at 50
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In a 1965 message to Congress, President Lyndon Johnson noted that “in almost every part of the country citizens are rallying to save landmarks of beauty and history. The government must also do its share to assist these local efforts which have an important national purpose.” The following year, the special report *With Heritage So Rich* recommended government action. Proposed steps included identification of places worth preserving, federal support for state and local efforts, and a process to guide planning and review of government-assisted threats to historic properties. The report called for “an adequately staffed Advisory Council on Historic Preservation, with membership representing the major federal departments and agencies involved in preservation matters, as well as state and local governments and public and private organizations interested in historic preservation and urban development.”

The report led to the National Historic Preservation Act (NHPA), signed by President Johnson on October 15, 1966. The NHPA established the Advisory Council on Historic Preservation (ACHP) to advise the president and Congress, review federal policies and programs, recommend better coordination of preservation activities by government and the private sector, prepare special studies on preservation issues, promote preservation training and education, and encourage public interest in preservation.

While the ACHP has other important roles, it is best known for implementing the federal project review process known as Section 106. *Section 106 (of the NHPA)* directs federal agencies to take into account the effects of their activities on historic properties and afford the ACHP a reasonable opportunity to comment. The Senate bill report explained that Section 106 “is intended to insure that the Federal agencies will not work at cross purposes with the goals of historic preservation and provides for a meaningful review of Federal or federally assisted projects which affect historic properties identified on the national register.”
Amendments to the NHPA in 1980 added specific responsibility to review federal agency policies and programs and recommend “methods to improve the effectiveness, coordination, and consistency of those policies and programs with the policies and programs carried out under this Act.” Those two tasks—project and program review—serve the ACHP’s basic mission: to be a federal advocate for historic preservation as a national priority and to provide an important strategy for advancing public policy.

The ACHP is composed of a “council” of citizen presidential appointees, cabinet officials, and other relevant individuals and organizations, as well as a small permanent staff. Originally set up and supported through the National Park Service (NPS), the ACHP became an independent agency as a result of 1976 amendments to the NHPA, which sought to avoid potential conflicts with construction work and management in the national parks.
EARLY IMPLEMENTATION OF SECTION 106

While the Section 106 process that was laid out in detail in regulations has evolved considerably, essentially the ACHP (or a state historic preservation officer [SHPO] and/or Tribal Historic Preservation Officer [THPO]) is contacted by an agency planning to carry out a project or grant a permit, and provided with background information about the project, for review and consultation. At first these “cases” were direct requests for comment from the full ACHP membership. In its first year, the ACHP received submissions on a heating and cooling plant for Georgetown University and siting of a nuclear power plant on the Hudson River near Saratoga Battlefield National Historical Park. Transfer of the U.S. Mint in San Francisco, military training activities at California’s Fort Hunter-Liggett, and a proposed highway across the island of Oahu in Hawaii followed soon after.

Such project proposals, their review by the ACHP, and the formal comments that were issued began to clarify basic preservation principles about how the impacts of projects should be taken into account. For example, the Georgetown project resulted in recommendations for design review and siting studies in historic districts. The case of the nuclear plant (never built—a new site was found) led to discussions about addressing indirect and visual effects on historic and cultural landscapes. The U.S. Mint project raised questions about viable alternatives for rehabilitation and reuse. The importance of early archaeological survey and other comprehensive planning studies was highlighted in the case of military training at installations, and the need to preserve traditional cultural sites was emphasized in response to the proposed highway route in Hawaii. While the ACHP’s involvement did not stop harmful projects, it exposed them to a certain amount of public scrutiny and forced government officials to document what they were proposing and consider the consequences. Besides establishing procedural and technical precedents, these cases raised the public visibility of historic resources listed on the National Register as well as government awareness of preservation values.
SECTION 106 EVOLVES

As the number of projects for review increased and the process was codified, the ACHP moved away from full member involvement. Originally Section 106 applied only to properties already listed on the National Register of Historic Places; following a 1971 executive order and the 1976 amendments, properties “eligible for” the National Register were also considered. Most cases were now routinely resolved at the staff level with ACHP member oversight.

Through its procedures and regulations, the ACHP also interpreted two parts of Section 106 at an early stage—the “take into account” standard and the ACHP’s reasonable opportunity to comment—to entail requiring consultation among the parties leading (preferably) to agreement on how to proceed. This interpretation has largely been upheld in federal court and by Congress.

In addition, the role of the states was significantly enhanced, and later augmented by tribal involvement. There was no SHPO role in the original law, only a provision of federal funding to states for conducting comprehensive preservation surveys. It was only later, through Section 106 involvement and NPS state program review, that the SHPO was identified as the key state representative.7 After further amendments in 1992, THPOs were also recognized. Today, following regulatory changes in 2004, SHPOs and THPOs review projects and consult with federal agencies and other project proponents on more than 120,000 Section 106 cases a year, while the ACHP oversees the process and reserves active involvement or technical assistance for perhaps 1,200 cases that present special issues or problems.

The need for detailed information about the location, nature, and significance of affected historic properties was coupled with the recognition that early planning and explicit consideration of project alternatives were critical. Major developments, such as pipelines, highways, bridges, transmission lines, and housing complexes, can have considerable impact on numerous historic resources and places of great significance. This is true whether the federal government is directly carrying out a major public works project or issuing the permits necessary for it to proceed. Particularly
when development proposals affect communities, citizens are encouraged to make their views known and get involved in Section 106 review.

Given its location, perhaps few cases have garnered more visibility, public interest, or media attention than the discovery of the African Burial Ground in lower Manhattan. Hundreds of human remains—which turned out to be part of a much larger burial ground estimated in the thousands—were discovered during construction of a new federal building in 1991. The remains were mostly those of enslaved people of African origin buried between 1650 and 1794. The lead agency, the General Services Administration, had archaeological studies carried out, but more and more remains kept turning up. Following ACHP involvement and an onsite congressional hearing, work was stopped and extensive consultation took place among federal, state, city, neighborhood, cultural heritage, and descendant groups concerned about the protection, memorialization, study, and disposition of the remains. Eventually the building project was modified and a plan for study, reburial, and a memorial was developed. The site became a National Historic Landmark in 1993 and a National Monument in 2006.

BEYOND “CASE” REVIEW: RECURRING ISSUES
Largely through Section 106, the ACHP found it necessary to deal with archaeology and hire archaeologists. A series of dams and other water and power projects in California, the desert southwest, and the central and southeast U.S. in the 1970s and 1980s resulted
in significant government scrutiny of archaeology, its cost, and its public benefits. The ACHP formed a task force and developed guidance on archaeological data recovery, proper design of meaningful archaeological research, and related concerns. These efforts have been advanced by ACHP staff professionals as well as the several professional archaeologists who have served as members. The basic principles articulated in the ACHP’s guidance and related policies—such as its policy on the treatment of burial sites, human remains, and funerary objects—remain largely in use, and much of the resulting professional experience has helped set the field’s standards.

Through its work in archaeology, as well as other activities, the ACHP has also become a strong advocate for the heritage and rights of indigenous peoples, including Indian tribes, Native Hawaiian organizations, and Alaska Natives. Through both Section 106 and policy development, the ACHP has facilitated the protection of numerous sacred sites and other traditional cultural places, such as Mount Shasta in California and Cave Rock in Nevada, as well as consideration for tribal ancestral lands throughout the country. Important policies and procedures for Native American consultation have been put in place, and a representative from the ACHP has served on the White House Council on Native American Affairs.

Bridging the (sometimes narrow) divide between cases and programs, the ACHP has also devoted significant time and attention to encouraging better planning for and response to natural and other disasters. The ACHP advised on clean up and protection of cultural resources after the Exxon Valdez oil spill in Alaska in 1989 and has been involved in the wake of multiple hurricanes, tornadoes, earthquakes, floods, and wildfires as well as the Oklahoma City and 9/11 terrorist attacks. In cooperation with federal agencies, SHPOs, and native groups, the ACHP has helped develop programmatic agreements specifying how individually affected historic buildings, sites, and districts are to be identified, evaluated, and addressed during recovery efforts. Intergovernmental coordination in the wake of Hurricane Sandy in 2012 resulted in creation of a unified federal environmental and historic preservation review process to plan for and deal with such disasters.
IMPROVING FEDERAL PROGRAMS

Starting in the 1980s, improving federal programs became a major focus for ACHP members and staff. The NHPA was amended (in 1980 and 1992) to encourage federal agencies to integrate historic preservation into their policies and programs, including developing their own historic property identification, evaluation, and protection strategies. Consistent with their missions and operations, agencies are directed to be caretakers of the portions of America’s cultural patrimony under their management or control.

The ACHP has worked to promote federal agency stewardship both through governmentwide reviews and assessments and through specifically focused training, guidance, tailored procedures, program “audits,” and other actions. Such efforts began with an interagency agreement with the Department of the Army in the late 1980s, which has proven to be an excellent model of interagency cooperation and led to the development of detailed cultural resource management plans for military installations throughout the country. Such agreements have also been developed with a number of other departments and agencies, focusing on agency policies and other program improvement work. As part of its Millennium Initiative in 2000, the ACHP prepared a special report on federal cultural stewardship on public lands and other federally controlled property (amounting to nearly one-third of the country). Then in 2003, under a presidential executive order, the ACHP was given new programmatic responsibilities: evaluating the state of federal historic property stewardship and determining how those holdings are contributing to local economic needs. This began a series of triennial ACHP reports to the president on federal historic property management. The next report is due in 2018.

PROMOTING FEDERAL PRESERVATION POLICY

Finally, as part of its core responsibility to advise the president and Congress on historic preservation and to recommend adoption of related policies, the ACHP has regularly prepared special reports and studies, provided ongoing review and testimony on legislation, promoted executive action and public-private partnerships to
advance preservation, and recommended policies governing its own and others’ work on matters ranging from preservation and affordable housing to treatment of human remains. Studies have focused on a broad range of preservation topics, including energy conservation, urban revitalization, tax policy, surplus public property, high-tech and scientific facilities, military installations, post offices, and legacy cities.⁹

In 2003 the ACHP advanced an executive order that helped promote heritage tourism and established the Preserve America Program, with community and volunteer group designations, presidential awards, and grant funding. A special report prepared by the ACHP at Senate request in 1976, The National Historic Preservation Program Today,¹⁰ set the stage for periodic assessments of the overall government program.¹¹ For the 40th anniversary of the NHPA in 2006, the Preserve America Summit developed ideas and actions for improving the national program. The ACHP, along with other agencies and nongovernmental partners, has implemented many of them.

LOOKING FORWARD
The ACHP has worked in the trenches and at the highest levels of government for nearly 50 years, providing a public forum for influencing federal and federally supported projects, programs, and policies that affect historic properties. In recent years the ACHP has promoted reaching out to young people through preservation, and supported building a more inclusive preservation program with outreach to African American, Asian American, and Latino communities. Today the NHPA and the preservation community face numerous challenges around rebuilding the nation’s infrastructure, energy development, and possible regulatory and tax reform, while also responding to climate change, meeting community sustainability needs, and broadening the inclusion of diverse cultural groups in preserving America’s heritage. The ACHP has again been reviewing the promise and needs of the national historic preservation program and is in the process of adopting policy recommendations for the incoming administration, Congress, federal agencies, and preservation
partners. We invite and encourage the preservation community to join us in making this a future agenda for all. FJ

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4  The first council had 10 citizen members out of 17. Leaders of six federal departments and the chairman of the National Trust for Historic Preservation made up the rest. The modern council has 23 members, including a governor, a mayor, and a representative of an Indian tribe or Native Hawaiian organization. When the ACHP became an independent agency, Robert R. Garvey Jr., former staff director at the National Trust, became the ACHP’s first executive (staff) director. See www.achp.gov for more on current composition, membership, and staffing.
5  Section 106 regulations are 36 CFR Part 800.
7  The 1980 amendments to the NHPA clarified and articulated SHPO responsibilities.
9  Examples of two recent ACHP special reports on preservation in legacy cities and preservation of historic post offices may be found at http://www.achp.gov/RightsizingReport.pdf and www.achp.gov/historicpostoffices.pdf.

TAKEAWAY
Read Section 106 Success Stories from the ACHP and the ACHP Alumni Foundation.

TAKEAWAY
“The National Historic Preservation Program at 50: Priorities and Recommendations for the Future”—a draft statement from the ACHP.