

A Framework for Creative Mitigation

The head of any federal agency having direct or indirect jurisdiction over a proposed federal or federally assisted undertaking in any state and the head of any department or independent agency having an authority to license any undertaking shall, prior to the approval of the expenditure of any federal funds on the undertaking or prior to the issuance of any license, as the case may be, take into account the effect of the undertaking on any district, site, building, structure or object that is included in or eligible for inclusion for the National Register. The head of any such federal agency shall afford the Advisory Council on Historic Preservation, established under Title II of this act, a reasonable opportunity to comment with regard to such undertaking.

Section 106 (16 U.S.C. 470f)
National Historic Preservation Act of 1966

Just a paragraph, but it has generated pages of regulations, followed by volumes of policy guidance and years of controversy. Of all the criticisms of the Section 106 process, one of the hardest to refute is that it is just a process. A paper pushing exercise that federal agencies and applicants for federal largess or permits must comply with before they get down to the real work of doing the project.

The best counter to this charge is to show results in historic preservation terms. What value has the process added to the project? How many resources have been preserved or how has our understanding of the past increased? What benefit to the community or to the general public has been conferred by this expenditure of time and money?

Yes, Section 106 is, at its heart, only procedural. For this reason, mitigation is, or should be, the most important outcome of the consultation process when there is an adverse effect on historic properties. However, in many cases, there is little creativity or energy left over by the time the identification, evaluation, and effect finding have been completed. In too many cases, both the agencies and state historic preservation offices look to stock solutions and what has always worked before. Based on a session by the National Conference of State Historic Preservation Officers (NCSHPO) in Duluth, Minnesota, in 1996, a subsequent questionnaire to all members and a session at the NCSHPO annual meeting in 1997, a more flexible and creative approach to mitigation has been identified as a desired result. The following frame-

work offers suggestions on new ways of carrying out standard mitigation treatments and a sampling of innovative ideas that have been tried or at least proposed in the recent years.

Standard Treatment Measures

The high volume of Section 106 reviews and the limited staff to manage the workload have led to standardized responses to projects with adverse effects on historic resources. Based on both questionnaire results and interviews with state preservation offices, most mitigation agreements involve the dreaded double Ds, “Document and Destroy,” when historic properties are involved or “Dig and Destroy” for archeological resources. Federal agencies and state historic preservation offices rely heavily on these approaches. The utility of standard treatments should not be minimized merely because they are standard. In many cases they are appropriate and have stood the test of time. However, they should be used subject to the following considerations:

Documentation or Recordation—Historic Structures

In default of any other recordation standards, agencies often request the National Park Service, Historic American Buildings Survey/Historic American Engineering Record (HABS/HAER) program to set the level of recordation. Some agencies have adopted the HABS/HAER standards wholesale for all properties to be demolished or substantially altered. This has resulted in expensive over-documentation of many kinds of historic resources.

The National Park Service, aware of this issue, has tackled it in a guidance document entitled “HABS/HAER Mitigation Documentation: A Reengineering Proposal.” It provides guidance for appropriate documentation, emphasizing that HABS/HAER level of documentation is not a requirement and should be reserved for resources significant on a national level.

An alternative is to develop state level recordation standards with a clear understanding of where the information will be archived. If no one knows it exists and it is not accessible, the value of preparing the documentation is diminished. Conversely, good documentation at any level can be the foundation of future publications, interpre-

tive signage, exhibits, and a host of interpretive and educational products.

Data Recovery—Archeology

Since data recovery is an often-used process in most states, agencies and contractors routinely prescribe it without much thought to where the information will end up and how it will be utilized. Unfortunately, many archeological data recovery reports are published in limited numbers and available in limited locations. These reports join the ever-growing ranks of the gray literature—so called because it is not available through regular searches of the literature or perhaps so called because of the poor quality of the copies!

Outcomes of data recovery projects can be improved if the work is undertaken within the framework of a state archeological plan and with the goal of addressing already identified research needs. Involving the professional archeological community in developing such a plan and ensuring that the information is presented at professional meetings and published in peer reviewed journals is critical.

Review of the Rehabilitation of Historic Buildings or Structures

Rehabilitation projects include downtown revitalization programs, housing rehabilitation, and other community development activities. While the *Secretary of the Interior's Standards for Rehabilitation and Guidelines for Rehabilitating Historic Buildings (Standards and Guidelines)* are almost always referenced as the standard by which the project will be reviewed, they may not be appropriate in every project. These *Standards and Guidelines* are not mandatory; therefore, alternative approaches should be considered when circumstances warrant.

Marketing

All marketing proposals should ensure that the offer is available to a broad audience. Utilizing local historic preservation organizations, realtors, and statewide preservation organizations can be helpful to develop both public support and to find active buyers.

The marketing of historic properties is usually very dependent on the old principle of location, location, and location. However, the marketing of more portable historic resources such as bridges may require a regional or even statewide marketing effort.

Easements and Covenants

The use of these tools can be a very powerful way to protect historic resources that are being transferred from government ownership. It is also a method to limit the secondary effects of federal projects such as development that might be

spurred by installation of highway interchanges or sewer and water infrastructure. Finding an appropriate party to hold and enforce covenants and easements is an important part of the agreement.

Public Benefit Measures

Public benefit provisions are a major step forward in sharing with the public the information gained through Section 106 compliance. Many times significant dollars are spent on researching, recording, or excavating a historic property and then the results are simply filed away and are not accessible to those with an interest in history or archeology, let alone regular citizens. Increasingly, agencies are recognizing that it is critical to build public support and to show results.

Popular Publications

Additional public benefit measures include a popular version of technical reports, booklets that illustrate the work on a property or its history, pamphlets, and brochures. One issue not always successfully addressed is the distribution of information produced as part of the mitigation process. Books or popular reports produced through existing presses or publication houses have an established distribution mechanism. However, many federal agencies and state preservation offices have stacks of brochures and booklets with no well-defined plan to get them in the hands of the end user.

Educational Curriculum

The development of school curriculum or other school programs can provide a long-term benefit to a local or regional school system. However, to best ensure utilization of the materials, these should be developed in coordination with classroom teachers and educators. Unless the curriculum fits within the state guidelines, i.e., children will be tested on it, it may only be an additional burden for teachers.

Interpretive Signage

Interpretive signs often are erected at the completion of a project to show, for example, the historic building or bridge previously in that location. An interesting twist on this approach is to place a sign interpreting the ongoing work. This is particularly useful for archeological excavations. If the signage can be placed within a statewide or regional context, it will make a more lasting contribution. In addition, the maintenance and long term care of interpretive signage is best allocated to an existing entity already in that business.

Exhibits

Exhibits can range from modest displays in community centers, local historical societies, libraries, and municipal buildings to permanent exhibits in major museums. Information gained

from HABS/HAER recordation or archeological excavation can be an important foundation for the development of meaningful exhibits. As in the above example, finding an appropriate partner who will undertake the long-term care of an exhibit is an important step.

Lectures, Open Houses, and Tours

These are especially effective for ongoing archeological excavations and can include the associated processing labs and artifact analysis areas. Community members and school groups enjoy the opportunity to visit work in progress and it draws very positive media attention.

Beyond Standard Mitigation Measures

Some states are going beyond standard mitigation to provide even more creative and flexible solutions. Most of these solutions require a higher level of public involvement and planning to actualize the project.

Contributions to a Local Historic Preservation Effort

In a quid pro quo approach, some states, through memoranda of agreements, have agreed to accept government agencies providing funds or other specified assistance for historic preservation purposes when their projects have an adverse effect on community resources. For example, a city that manages a Community Development Block Grant Program might establish a revolving loan program to benefit other historic resources in a historic district where agency actions are having an adverse effect.

Relocation of Historic Properties

In some cases, the provision to relocate also includes a provision to market the property. While relocation is never an ideal historical preservation

solution, in some cases it may be the best of a bad choice.

Development of Historic Contexts and National Register Nominations

The preparation of historic contexts and associated National Register nominations for an impacted historic resource is another approach to mitigation. The development of a historic context is a gift that will keep on giving. Historic resources associated with an existing context can then be listed more easily in the National Register and provided with such benefits as listing entails.

Preparation of Preservation Plans or Preservation Ordinances

Another effective approach that encourages the future preservation of historic resources is to fund preservation plans or ordinances as part of a mitigation strategy. It is critical to the success of such an effort to make sure that the local government or other community partners are working together to ensure the development and implementation of any product.

Innovative Mitigation Measures

Establishing a Fund for Future Preservation Activities

There are a number of outside-the-envelope mitigation ideas being tested across the nation. While revolving funds have been set up for the treatment of historic properties within the area of potential effect of a federal project, the more straightforward payment of money damages has not yet been widely accepted. It is a tempting idea, but it needs to be tied to project impacts in some defensible way. Those parties implementing such an approach should consider how the fund would deal with secondary or cumulative impacts of the projects in question. A related approach is to establish a gift of goods or services in lieu of actual liquidated damages.

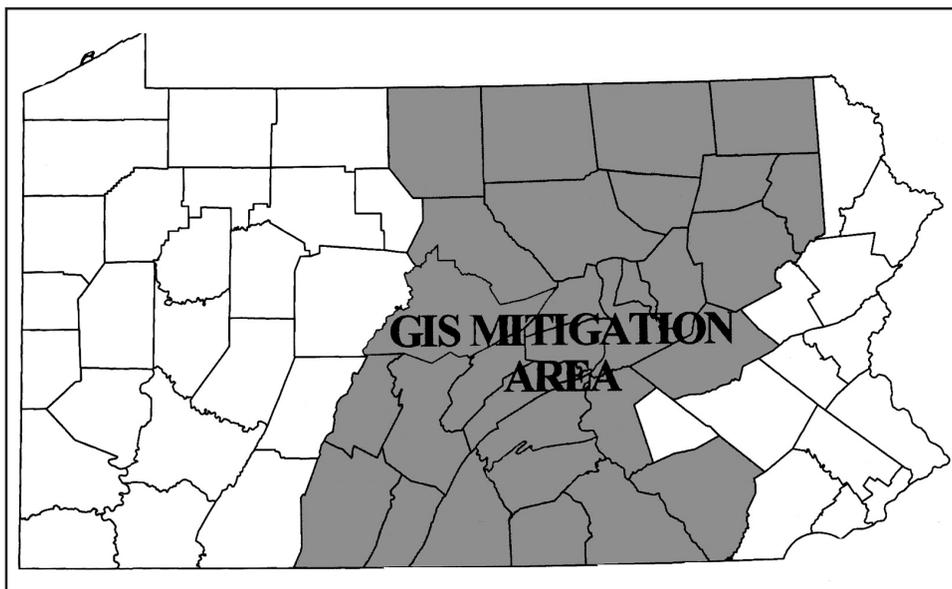
Restoring or Preserving a Resource Similar to One Adversely Effected

This eye-for-an-eye approach has been done in a few cases and it appeals to basic fairness. Another variation to restoring a similar property would be to protect a similar property with a perpetual easement.

Off-Site Mitigation

This is similar to the above procedure, but envisions a broader base of operations. It has been proposed, particularly

In Pennsylvania, the Corps of Engineers funded the entry of cultural data into the Commonwealth's Geographic Information Systems mitigation for the impacts of a major flood control project on Susquehanna River Basin.



for archeological resources, where similar archeological resources can be found adjacent to the project area. In the environmental community, wetlands off site mitigation is a very common practice.

Other Factors in Creative Mitigation

There are a lot of creative ideas out there.

The biggest stumbling block to implementing creative approaches to Section 106 are a lack of time and money. A couple of key concepts for improved mitigation include:

Public Involvement

The development of mitigation should be done in concert with the public and the interested parties. Whether the product is an interpretive sign or a new zoning ordinance, it will have value only if the parties who must care for it or implement it are involved in its development. Taking time early in the consultation process to identify interested parties is important and it doesn't have to be just the local historical society!

Lessons Learned

Every consultation on adverse effects under Section 106 is a teaching moment. For federal and state agencies it should be an opportunity to reflect on how to plan and develop projects to avoid adverse effects in the future. For members of the public and for interested parties, the stakes may be higher. After all, they may not have another Section 106 case that effects their neighborhood or home. However, the adverse effect and the opportunity for consultation and negotiation can be a

starting point for better historic preservation in the future. If agencies truly involve the public, they may be empowered to come up with both good mitigation and a better approach to the preservation of community heritage.

Planning Mitigation Measures

State preservation offices and agencies can identify research issues and needed historic context and, as projects are proposed that would impact this type of resource, match up the need with the potential impact. Another planning approach is the production of public benefit products. For example, SHPOs and agencies may develop a history or archeology series that can be added to through mitigation products. Early involvement of educators in developing educational curriculums can help identify needs and match mitigation products to those needs.

This effort is intended as a framework to assist all parties in improving the Section 106 consultation. On behalf of myself and the National Conference of State Historic Preservation Officers, I would appreciate comments and additions to this work. Special thanks to Elizabeth Merrit of the National Trust for Historic Preservation and to Don Klima and Jane Crisler of the Advisory Council on Historic Preservation for their assistance.

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Comments on Compliance and Management

The articles presented in this issue of *CRM* are examples of projects and programs designed to benefit historic properties and their management through collaboration. These cases represent some of the more innovative and creative solutions to the conflicts that occur between development and historic property values that we see at the Council. They are not the only creative solutions we have seen in recent years, but they provide a useful range of situations, and solutions, that professionals in cultural resource management may want to know about.

There is a fairly diverse range of historic properties and issues tackled by the presenters here:

Mike Andrews worked to bring the history and engineering aspects of the Shoshone Irrigation

Project to the interested public. Various kinds of media exhibits were used to convey the range of historical significance the project exhibited.

Fred Chapman's dilemma was to try to uphold the values that made the Medicine Wheel sacred site significant in the first place in the face of an agency and local community who wanted to develop it for heritage tourism purposes.

Jan Balsam was faced with development of programs to accommodate the Bureau of Reclamation's perennial water releases from the Glen Canyon Dam into the Grand Canyon, where hundreds of archeological and traditional cultural properties vulnerable to and suffering from the effects of water release practices needed to be managed in the long term.