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Subject

8100 - THE FOUNDATIONS FOR MANAGING CULTURAL RESOURCES (PUBLIC)

1. Explanation of Material Transmitted. This release completely revises BLM Manual Section 8100.
2. Reports Required: None.
3. Materials Superseded: Manual pages superseded by this release are listed under REMOVE below. No other directives are superseded.
4. Filing Instructions: File as directed below:

REMOVE

All of 8100 (Rel. 8-38)

INSERT

8100

(Total: 72 Sheets)

8100 - THE FOUNDATIONS FOR MANAGING CULTURAL RESOURCES – (Public)

Table of Contents

- .01 Purpose
- .02 Objectives
- .03 Authority
- .04 Responsibility
- .05 References
- .06 Policy
- .07 File and Records Maintenance
- .08 Responsibility for Non-Federal Cultural Resources
- .09 Program Relationships
  
- .1 National Programmatic Agreement Regulates BLM's Compliance with NHPA
  - .11 Historic Preservation is Integrated into Multiple-Use Management under FLPMA
  - .12 Authority to Implement the Programmatic Agreement is Provisional
  - .13 BLM Standards Required under the National Programmatic Agreement
  - .14 Thresholds for Council Participation
  
- .2 Personnel Qualifications and Administrative Requirements
  - .21 Personnel Must Meet Permit Standards
  - .22 Alternate Documentation Allowed for Official Duties
  - .23 BLM Personnel
  - .24 Non-BLM Personnel
  
- .3 Preparing and Distributing Annual Reports
  - .31 Data Compilation
  - .32 Report Content
  - .33 Report Distribution

Glossary of Terms

Appendices

- 1. Antiquities Act of 1906
- 2. Historic Sites Act
- 3. Reservoir Salvage Act
- 4. Archeological and Historic Preservation Act
- 5. National Historic Preservation Act
- 6. Executive Order 11593
- 7. American Indian Religious Freedom Act
- 8. Archaeological Resources Protection Act
- 9. Native American Graves Protection and Repatriation Act
- 10. National Trails System Act (Excerpts)
- 11. Executive Order 13007
- 12. Executive Order 13287
- 13. National Programmatic Agreement
- 14. Preservation Board Charter
- 15. Advisory Council Letter of May 24,1999 TC-2

8100 - THE FOUNDATIONS FOR MANAGING CULTURAL RESOURCES – (Public)

Manual Sections in the 8100 Series

8100 - The Foundations for Managing Cultural Resources

8110 - Identifying and Evaluating Cultural Resources

8120 – Tribal Consultation Under Cultural Resource Authorities

8130 - Planning for Uses of Cultural Resources

8140 - Protecting Cultural Resources

8150 - Permitting Uses of Cultural Resources

8160 - Preserving Museum Collections [Reserved]

8170 - Interpreting Cultural Resources for the Public

8100 - THE FOUNDATIONS FOR MANAGING CULTURAL RESOURCES – (Public)

.01 Purpose. This Manual Section is intended as a reference source to provide BLM managers with basic information and general summary guidance for managing cultural resources. More detailed information, policy direction, and operating procedures are found in the subsidiary Manual Sections and Handbooks in this series (see .05). The purpose of the Manual series is to establish a uniform BLM process for meeting the spirit and requirements of the cultural resource authorities (see .03) in a dynamic multiple use environment.

.02 Objectives. Managing cultural resources in BLM is viewed as an integrated system of identifying and evaluating cultural resources, deciding on their appropriate uses, and administering them accordingly, both on public lands and on other lands where BLM decisions could affect cultural resources. The objectives of this integrated management system are to:

A. Respond in a legally sufficient and professional manner to (1) the legal authorities concerning historic preservation and cultural resource protection, and (2) the principles of multiple use.

B. Recognize the potential public and scientific uses of, and the values attributed to, cultural resources on the public lands, and manage the lands and cultural resources so that these uses and values are appropriately protected.

C. Contribute to land use planning and the multiple use management of the public lands in ways that make optimum use of the thousands of years of land use history inherent in cultural resource information, and that safeguard opportunities for achieving appropriate uses of cultural resources.

D. Protect and preserve in place representative examples of the full array of cultural resources on public lands for the benefit of scientific and public use by present and future generations.

E. Ensure that proposed land uses avoid inadvertent damage to Federal and non-Federal cultural resources.

F. Further the goals of the Department's and the BLM's Strategic Plan and the Government Performance and Results Act.

8100 - THE FOUNDATIONS FOR MANAGING CULTURAL RESOURCES – (Public)

.03 Authority.

A. "An Act for the Preservation of American Antiquities," also known as the Antiquities Act of 1906 (P.L. 59-209; 34 Stat. 225; 16 U.S.C. 432, 433), is chronologically and philosophically the basic legislation for the protection and preservation of cultural properties (archaeological and historic, without regard to minimum age) on Federal lands. It provides for permits to authorize scholarly use of properties, for misdemeanor-level penalties to control unauthorized use, and for presidential designation of outstanding properties as national monuments for long-term preservation. The act is implemented by uniform regulations at 43 CFR Part 3. Both broader in scope than and superseded in part by the Archaeological Resources Protection Act (see .O3J), it remains a fully active statutory authority. (See Appendix 1.)

B. Recreation and Public Purposes Act of 1926 (P.L. 69-386; 44 Stat. 741; 43 U.S.C. 869) authorizes the lease or sale of historic properties under certain conditions. (See 43 CFR Subpart 2741 and BLM Manual Section 2740.)

C. Historic Sites Act of 1935 (P.L. 74-292; 49 Stat. 666; 16 U.S.C. 461) declares national policy to identify and preserve "historic sites, buildings, objects and antiquities" of national significance, authorizing the National Historic Landmarks program of the National Park Service and providing a foundation for the later National Register of Historic Places (see .O3E). Regulations implementing the Landmarks program are at 36 CFR Part 65. (See Appendix 2.)

D. Reservoir Salvage Act of 1960, as amended by Archeological and Historic Preservation Act of 1974 (P.L. 86-523; 74 Stat. 220, 221; 16 U.S.C. 469; P.L. 93-291; 88 Stat. 174; 16 U.S.C. 469) provides for the preservation of historical and archaeological data that might otherwise be lost as the result of a Federal construction project or a federally licensed or assisted project, activity, or program having an effect on cultural resources. Although amended and broadened after 1966, the act makes no distinction regarding National Register eligibility (see .O3E). The act provides that up to one percent of funds the Congress authorizes to be appropriated for a project may be spent to recover, preserve, and protect archaeological and historical data. Because BLM projects are rarely subject to line item authorization and appropriation, this provision generally does not apply to BLM. (See Appendices 3 and 4.)

8100 - THE FOUNDATIONS FOR MANAGING CULTURAL RESOURCES – (Public)

E. National Historic Preservation Act of 1966 (P.L. 89-665; 80 Stat. 915; 16 U.S.C. 470), as amended, extends the policy in the Historic Sites Act to include State and local as well as national significance, expands the National Register of Historic Places, and establishes the Advisory Council on Historic Preservation, State Historic Preservation Officers, Tribal Preservation Officers, and a preservation grants-in-aid program. Section 106 directs all Federal agencies to take into account effects of their undertakings (actions and authorizations) on properties included in or eligible for the National Register of Historic Places, and Section 110 sets inventory, nomination, protection, and preservation responsibilities for federally owned cultural properties. Section 110(c) requires each Federal agency to designate a Preservation Officer to coordinate activities under the act. Section 106 of the act is implemented by regulations of the Advisory Council on Historic Preservation, 36 CFR Part 800. (See Appendix 5.) The 10 Western BLM States and Alaska comply with Section 106 of the Act according to a national Programmatic Agreement dated March 26, 1997. (See Appendix 13.)

F. National Environmental Policy Act of 1969 (P.L. 91-190; 83 Stat. 852; 42 U.S.C. 4321) establishes national policy for the protection and enhancement of the environment. Part of the function of the Federal Government in protecting the environment is to "preserve important historic, cultural, and natural aspects of our national heritage." Cultural resources need not be determined eligible for the National Register of Historic Places (as in the National Historic Preservation Act) to receive consideration under the National Environmental Policy Act. The act is implemented by regulations of the Council on Environmental Quality, 40 CFR 1500-1508. A procedural statute, the act provides for public participation in the consideration of cultural resource issues, among others, during agency decisionmaking.

G. Executive Order 11593 ("Protection and Enhancement of the Cultural Environment," 36 F.R. 8921, May 13, 1971) directs Federal agencies to inventory cultural properties under their jurisdiction, to nominate to the National Register of Historic Places all federally owned properties that meet the criteria, to use due caution until the inventory and nomination processes are completed, and also to assure that Federal plans and programs contribute to preservation and enhancement of nonfederally owned properties. Some of the provisions of the Executive Order are also found in Section 110 of the National Historic Preservation Act. (See Appendix 6.)

H. Federal Land Policy and Management Act of 1976 (P.L. 94-579; 90 Stat. 2743; 43 U.S.C. 1701; "FLPMA") directs the Bureau of Land Management to manage public lands on the basis of multiple use, in a manner that "recognizes the Nation's need for domestic sources of minerals, food, timber, and fiber from the public lands" and that will "protect the quality of . . . historical . . . resources, and archeological values." Cultural resources need not be determined eligible for the National Register of Historic Places (as in the National Historic Preservation Act) to receive consideration under the FLPMA. The act provides for the periodic inventory of public lands and resources, for long-range, comprehensive land use planning, for permits to regulate use of the public lands, and for the enforcement of public land laws and regulations. FLPMA provides the broadest framework for managing cultural resources on the public lands.

8100 - THE FOUNDATIONS FOR MANAGING CULTURAL RESOURCES – (Public)

I. American Indian Religious Freedom Act of 1978 (P.L. 95-431; 92 Stat. 469; 42 U.S.C. 1996) resolves that it shall be the policy of the United States to protect and preserve for the American Indian, Eskimo, Aleut, and Native Hawaiian the inherent right of freedom to believe, express, and exercise their traditional religions, including but not limited to access to religious sites, use and possession of sacred objects, and freedom to worship through ceremonials and traditional rites. Federal agencies are directed to evaluate their policies and procedures to determine if changes are needed to ensure that such rights and freedoms are not disrupted by agency practices. The act, a specific expression of First Amendment guarantees of religious freedom, is not implemented by regulations. (See Appendix 7.) (Note: A U.S. Court of Appeals has determined that there is a compliance element in the American Indian Religious Freedom Act, requiring that (1) the views of Indian leaders be obtained and considered when a proposed land use might conflict with traditional Indian religious beliefs or practices, and that (2) unnecessary interference with Indian religious practices be avoided during project implementation, but specifying that (3) conflict need not necessarily bar Federal agencies from adopting proposed land uses in the public interest. Wilson v. Block, 708 F.2d 735, 747 (D.C. Cir. 1983).) An amendment in 1994 (P.L. 103-344) provided for Indians' use, possession, and transportation of peyote for traditional religious purposes.

J. Archaeological Resources Protection Act of 1979 (P.L. 96-95; 93 Stat. 721; 16 U.S.C. 470aa et seq.) as amended (P.L. 100-555; P.L. 100-588) provides felony-level penalties, more severe than those of the Antiquities Act of 1906 (see .03A), for the unauthorized excavation, removal, damage, alteration, defacement, or the attempted unauthorized removal, damage, alteration, or defacement of any archaeological resource, more than 100 years of age, found on public lands or Indian lands. The act also prohibits the sale, purchase, exchange, transportation, receipt, or offering of any archaeological resource obtained from public lands or Indian lands in violation of any provision, rule, regulation, ordinance, or permit under the act, or under any Federal, State, or local law. Archaeological resources need not be determined eligible for the National Register of Historic Places (as in the National Historic Preservation Act) to receive consideration under the ARPA. The act establishes definitions, permit requirements, and criminal and civil penalties, among other provisions. The act overlaps with and partially supersedes the Antiquities Act, in its provisions for permits and penalties. It is implemented by uniform regulations and departmental regulations, both at 43 CFR Part 7. An amendment in 1988 gives Federal agencies explicit direction to establish educational programs explaining the importance of archaeology, to help members of the public understand why archaeological resources are protected from unauthorized removal or damage (See Appendix 8.)

8100 - THE FOUNDATIONS FOR MANAGING CULTURAL RESOURCES – (Public)

K. Native American Graves Protection and Repatriation Act of 1990 (P.L. 101-601; 104 Stat. 3048; 25 U.S.C. 3001) establishes rights of Indian tribes and Native Hawaiian organizations to claim ownership of certain "cultural items," including human remains, funerary objects, sacred objects, and objects of cultural patrimony held or controlled by Federal agencies and museums that receive Federal funds. The act requires agencies and museums to identify holdings of such remains and objects and to work with appropriate Native American groups toward their repatriation. Permits for the excavation and/or removal of "cultural items" protected by the act require Native American consultation, as do discoveries of "cultural items" made during land use activities. The Secretary of the Interior's implementing regulations are at 43 CFR Part 10. (See Appendix 9.)

L. National Trails System Act of 1968 (P.L. 90-543; 16 U.S.C. 1241 et. seq. as amended through P.L. 107-325, December 4, 2002) established a national trails system to promote preservation of, public access to, travel within, and enjoyment of the open-air, outdoor areas, and historic resources of the nation. The Act designated initial trail system components and established methods and standards for adding additional components. Trails are added to the system only by act of Congress. Historic Trails, trail sites, and trail segments must be evaluated against the National Register criteria at 36 CFR Part 60, whether congressionally designated or not, to determine National Register qualification (See Manual Section 8110.3; Departmental Manual 710; National Register Bulletin #30) and related NHPA Section 106 responsibilities.

M. Executive Order 13007 ("Indian Sacred Sites," 61 F.R. 104, May 24, 1996) provides that in managing Federal lands, agencies—to the extent practicable, permitted by law, and not clearly inconsistent with essential agency functions—shall accommodate Indian religious practitioners' access to and ceremonial use of Indian sacred sites, shall avoid adversely affecting the physical integrity of such sites, and shall maintain the confidentiality of sacred sites. The responsibility to identify such sacred sites to the managing agency resides with the Indian tribe or appropriately authoritative representative of an Indian religion. The responsibility to inform tribes, where practicable and appropriate, of proposed actions or land management policies that could restrict future access to or ceremonial use of, or adversely affect the physical integrity of, sacred sites, rests with the agency. The Order directs agencies to comply with the Executive Memorandum of April 29, 1994, "Government-to-Government Relations with Native American Tribal Governments." It explicitly does not create any new right or benefit for Indian tribes, nor any new trust responsibility for the Federal Government. (See Appendix 10.)

N. Executive Order 13287 ("Preserve America" 68 F.R. 43, March 5, 2003) orders the Federal Government to take a leadership role in protection, enhancement, and contemporary use of historic properties owned by the Federal Government, and promote intergovernmental cooperation and partnerships for preservation and use of historic properties. The order establishes new accountability for agencies with regard to inventories and stewardship.

8100 - THE FOUNDATIONS FOR MANAGING CULTURAL RESOURCES – (Public)

.04 Responsibility.

A. Director, through the Assistant Director, Renewable Resources and Planning, and the Manager, Cultural and Fossil Resources and Tribal Consultation Group, is responsible for:

1. Overall direction, leadership, and coordination for the implementation and evaluation of BLM's cultural resource management procedures and initiatives.
2. Cultural resource management guidance, information, strategies, procedures, and directives as required by other staffs and BLM offices. This is accomplished in consultation with the related Washington Office Group(s).
3. Coordination of contacts with other Federal bureaus, agencies, and departmental offices in Washington, D.C., regarding cultural resource concerns, in consultation with the related Washington Office Group(s).

B. State Directors, within their respective jurisdictions, are responsible for:

1. Directing implementation of the cultural resource management program and identifying priorities for implementing program elements.
2. Providing statewide training and technical direction for implementing program elements.
3. Monitoring the progress and quality of work being completed at the field level.

C. Field Office Managers are responsible for directing the implementation and maintenance of the cultural resource management program within their respective areas of authority, and for ensuring that all elements of the program are conducted in conformance with legal and professional standards. Managers are also responsible for encouraging and enabling the cultural resource staff specialists under their supervision to maintain and strengthen their professional qualifications, through training, course work, attendance at professional conferences, special details, and other means.

D. Cultural Resource Specialists are responsible for providing professionally sound recommendations, advice, and service to managers to assist them in fulfilling their responsibilities. Specialists are also responsible for maintaining and strengthening their own professional and technical knowledge and skills, which includes staying current with professional methods and standards and legal/regulatory matters pertinent to performance of their duties. Staff specialists must inform their supervisor when a proposed work assignment exceeds their professional qualifications. (See "Professional Development" commitments in BLM's national Programmatic Agreement, items 7.a. and b., App. 13, p. 10.)

8100 - THE FOUNDATIONS FOR MANAGING CULTURAL RESOURCES – (Public)

E. All Field Personnel are responsible for knowing and observing the prohibitions against unauthorized disturbance of cultural resources and collection of archaeological and historical artifacts; reporting all cultural resource discoveries; avoiding damage to or destruction of cultural resources; and reporting to appropriate officials any apparent violations of the laws and regulations protecting cultural resources.

F. The Bureau's Preservation Officer, a senior cultural resource specialist in the Headquarters Office, is responsible for fulfilling coordination duties under the National Historic Preservation Act (see Appendix 5, Section 110(c)), and for advising the directorate on professional and technical matters relating to cultural resource management. The Preservation Officer chairs the Preservation Board (.04H).

G. Deputy Preservation Officer, a senior cultural resource specialist on each State Director's staff, is responsible for advising the State Director and Field Office managers on professional and technical matters relating to cultural resource management, and for serving as an ex-officio member on the Preservation Board (.04H).

H. The Preservation Board, established by the Director pursuant to the national Programmatic Agreement of March 26, 1997 (Appendix 13), oversees historic preservation activities bureauwide, coordinates with the Advisory Council on Historic Preservation and the State Historic Preservation Officers, and advises the State Directors and the Headquarters Directorate on historic preservation matters. See Appendix 14, Preservation Board Charter, and BLM Manual Section 1211.09G.

8100 - THE FOUNDATIONS FOR MANAGING CULTURAL RESOURCES – (Public)

.05 References.

- A. National Programmatic Agreement of March 26, 1997 (see Appendix 13).
- B. Title 36 Code of Federal Regulations, Parts 60, 61, 63, 65, 68, 79, and 800.
- C. Title 43 Code of Federal Regulations, Parts 3 and 7.
- D. BLM Manual Section 8110 - Identifying and Evaluating Cultural Resources.
- E. BLM Manual Section 8120 – Tribal Consultation Under Cultural Resource Authorities
- F. BLM Manual Handbook H-8120-1 - Guidelines for Conducting Tribal Consultation
- G. BLM Manual Section 8130 - Planning for Uses of Cultural Resources
- H. BLM Manual Section 8140 - Protecting Cultural Resources.
- I. BLM Manual Section 8150 - Permitting Uses of Cultural Resources
- J. BLM Manual Section 8160 - Preserving Museum Collections [Reserved]
- K. BLM Manual Section 8170 - Interpreting Cultural Resources for Public Use

8100 - THE FOUNDATIONS FOR MANAGING CULTURAL RESOURCES – (Public)

.06 Policy.

A. Cultural resources are recognized as fragile, irreplaceable resources with potential public and scientific uses, representing an important and integral part of our Nation's heritage.

B. The BLM manages cultural resources under its jurisdiction or control according to their relative importance, protecting against impairment, destruction, and inadvertent loss, and encouraging and accommodating the uses determined appropriate through planning and public participation.

C. Apart from certain considerations derived from specific cultural resource statutes, management of cultural resources on the public lands is primarily based on FLPMA (see .03H), and is governed by the same multiple use principles and the same planning and decisionmaking processes as are followed in managing other public land resources.

.07 File and Records Maintenance. See .22, .23C, .23D, .24A-D, .3. See also subsidiary Manual Sections in this series. Filing requirements are found in the GRS/BLM Combined Records Schedule (Schedule 4).

.08 Responsibility for Non-Federal Cultural Resources.

A. The BLM assures that its actions and authorizations are considered in terms of their effects on cultural resources located on non-Federal land. The extent of BLM's responsibility for identifying and protecting non-Federal cultural resources is limited by the degree to which BLM decisions determine or control the location of activities on non-Federal lands which could have effects on cultural resources. (See BLM Manual Section 8140.06D.)

B. The BLM conducts, or causes to be conducted, the inventory and evaluation of cultural resources on non-Federal lands within the area potentially impacted by proposed land uses, whether initiated by BLM or in response to a land use application.

C. The BLM mitigates, or causes to be mitigated, adverse effects to non-Federal cultural properties that would result from land uses carried out by or authorized by BLM.

D. When mitigation involves data recovery, the artifacts, samples, and collections recovered from non-Federal land remain the property of the non-Federal landowner unless donated to the Federal Government. The United States must receive complete and true copies of the investigator's original field notes, maps, records of analyses, photographs, other data, and reports when mitigation work is conducted on non-Federal land on behalf of the Federal Government. Reports resulting from work on non-Federal land should be made available to the land owner.

E. Identification and/or mitigation of adverse effects may be required as a condition of a lease, permit, or license issued by BLM, whether Federal or non-Federal lands are involved.

8100 - THE FOUNDATIONS FOR MANAGING CULTURAL RESOURCES – (Public)

.09 Program Relationships.

A. Relationship to Other BLM Programs.

1. BLM Planning System. (See BLM Manual Sections 1601 and 8130).

a. The management of cultural resources (including but not limited to protection, public use, and scientific use of the resources) shall be guided by and in accordance with approved BLM land use plans, principally Resource Management Plans (RMP).

b. Together with the other public land resources, cultural resources are considered in BLM land use plans as follows:

(1) Land use plans take into account the extent to which implementation of the cultural resource management objectives may affect other resource management programs and actions.

(2) Land use plans also take into account the extent to which other potential land and resource uses may have effects on cultural resources. The need for developing additional cultural resource information, e.g., sample inventory, is assessed relative to the potential effects, responsibility is assigned, and data acquisition tasks and schedules are established at the outset of land use planning.

(3) Evidence of cultural resource consideration (including, as applicable, compliance with Section 106 of the National Historic Preservation Act (NHPA) and Native American consultation in observance of the NHPA, the American Indian Religious Freedom Act, the Archaeological Resources Protection Act, and the Native American Graves Protection and Repatriation Act) is incorporated in the environmental impact statement prepared as part of the land use plan.

(4) Each land use plan should make full use of any cultural resource information that can provide insights into successful and failed attempts at using the land and resources in the prehistoric and historic past, whenever analogous land and resource uses are being considered in the plan.

2. Recreation Management Program. (See BLM Manual series 8300.)

a. The long-term management of some cultural properties, determined to be suited to management for public visitation and/or interpretation, may be found to fall partly within the recreation management program. Whenever cultural properties are to be developed to accommodate public visitation, interpretation, and education, recreation management expertise is an essential part of the development.

8100 - THE FOUNDATIONS FOR MANAGING CULTURAL RESOURCES – (Public)

b. Any recreational use of cultural properties must be compatible with cultural resource management objectives established through evaluation and planning, and must be closely coordinated with and draw on the technical expertise of the cultural resource staff.

c. Restoration of cultural properties may be undertaken by BLM to meet recreation program objectives. In contrast, similar cultural resource program actions are normally limited to stabilizing and maintaining a cultural property's present condition.

d. Onsite interpretation of cultural properties for public education may also have the objective and effect of protecting other use(s) assigned to the cultural properties. The division of funding, staffing, and roles is determined case by case, based on the balance of benefits to each program.

e. The cultural resource staff assists the recreation staff by providing:

(1) Cultural resource inventory and evaluation data appropriate for analysis from a recreation opportunity standpoint.

(2) Any cultural resource technical expertise needed for accurate interpretation, restoration, or other recreation-related development and use of cultural properties.

3. National Landscape Conservation System (NLCS). The NLCS staff in Headquarters, State, and field offices guides the long-term management of National Monuments, National Conservation Areas, Wilderness Areas, National Rivers, National Trails, and other types of congressionally designated conservation system units. Presidential proclamations and congressional designations for many units of these systems recognize the contributions of archaeological and historic properties to their overall national importance. For such units, coordination between NLCS and cultural resource staffs is vital, especially during the development of management plans.

4. Other Land and Resource Management Programs.

a. Compliance Requirements. All BLM resource programs that may have an effect on cultural resources through their actions or authorizations are responsible, as benefiting activities, for funding:

(1) Cultural resource inventories and evaluations as needed to measure potential effects, including analysis and report preparation following completion of fieldwork.

(2) Documentation adequate for conducting consultations required under Section 106 of the National Historic Preservation Act and Section 3(c) of the Native American Graves Protection and Repatriation Act.

8100 - THE FOUNDATIONS FOR MANAGING CULTURAL RESOURCES – (Public)

(3) Cultural resource protection work needed to avoid or mitigate adverse effects of land or resource use on cultural resources, including analysis and report preparation following completion of fieldwork, and curation of collections and copies of records, data, photographs, and other documents derived from the work following completion of analyses and reports.

b. Paleontological Resource Management. Paleontological (fossil) resource management (subject-function code 8270) is distinct from cultural resource management (subject-function code 8100, etc.). However, if fossils are found in direct association with archaeological materials, they are also considered to be archaeological resources and are protected by the Archaeological Resources Protection Act. (See Appendix 8, Section 3.)

5. Management Supporting Programs. The Manuals in this Manual Series frequently refer to the various BLM programs that contribute support to assist the cultural resource management program in meeting its objectives (such as planning, environmental coordination, law enforcement, engineering, cadastral survey, land and minerals operations, records, public affairs, and others). Personnel in those programs receive technical and policy guidance from their own Manuals and program directives unless otherwise noted.

B. Relationship to Federal Historic Preservation Programs.

1. National Park Service (NPS). The National Park Service administers several programs the BLM may employ while managing cultural resources on BLM- administered lands. Consultation, joint projects, or technical assistance may be arranged with the NPS when they would promote the effectiveness or efficiency of BLM program execution or aid the NPS in its assigned roles. The BLM provides data to the NPS as requested for annual reports to the Congress under Public Laws 93-291 and 96-95 (see Appendices 4 and 8).

a. National Register and Landmarks. The NPS administers the National Register of Historic Places and the National Historic Landmarks program. The BLM's National Register nominations and formal requests for determinations of eligibility are submitted to the NPS for decision (36 CFR Part 60). Properties the BLM and the State Historic Preservation Officer recommend for inclusion in the National Register as nationally significant are considered by NPS for potential Landmark designation. The BLM comments on NPS proposals to designate BLM properties as Landmarks. The NPS exercises the responsibilities of the Secretary to administer these programs, but does not have any management authority over BLM properties included in these programs.

b. Project Mitigation. The Secretary's responsibility for coordinating activities under the Reservoir Salvage Act as amended by the Archeological and Historic Preservation Act (Public Laws 86-523 and 93-291, Appendices 3 and 4), and for preparing an annual report to the Congress on the scope and effectiveness of that program, is delegated to the NPS. It would be exceedingly rare for BLM to conduct project mitigation under this authority (see .03D) instead of under the authority of Section 106 of the National Historic Preservation Act (see .03E).

8100 - THE FOUNDATIONS FOR MANAGING CULTURAL RESOURCES – (Public)

c. Protection Consultation and Technical Information. Executive Order 11593 authorizes the Secretary, through the NPS, to advise Federal agencies on the identification and evaluation of cultural resources, and to develop and disseminate information concerning methods and techniques of protection, restoration, and maintenance of cultural properties. The BLM may consult with NPS on these matters. Implementation of NPS recommendations is at the BLM's discretion.

d. Standards and Guidelines. The National Historic Preservation Act requires the Secretary to develop various professional standards and guidelines for the preservation of cultural properties in Federal ownership or control. This function is delegated to the NPS. The BLM observes the standards and guidelines as applicable.

e. Native American Graves Protection. Under the Native American Graves Protection and Repatriation Act (see Appendix 9), the Secretary is responsible to promulgate implementing regulations, to establish a Review Committee to oversee implementation, to ensure that museums comply, and to grant funds to Indian tribes, Native Hawaiian organizations, and museums for carrying out the Act. The Secretary has delegated these duties to the NPS.

2. Advisory Council on Historic Preservation. Under the national Programmatic Agreement, the Advisory Council has an advisory-consultative role in the BLM management process and when a proposed land use might have an effect on a nationally significant cultural property or would involve interstate and/or interagency coordination. Offices not operating under the national Programmatic Agreement are required to follow the Council's Section 106 regulations at 36 CFR Part 800. In either case, after compliance obligations have been met, the authority and responsibility for decisions remain with the Field Office manager.

C. Relationship to Tribal, State and Local Historic Preservation Programs.

1. Tribal Historic Preservation Officer (THPO).

a. As authorized in Section 101(d) of the National Historic Preservation Act and subject to the Secretary's approval, Indian tribes may establish historic preservation programs to give them greater roles and responsibilities for preserving historic properties on tribal lands. Tribes with approved programs designate Tribal Historic Preservation Officers (THPO) who may assume any or all of the functions of a State Historic Preservation Officer (SHPO) with respect to tribal land. Assumed functions may include identifying and maintaining inventories of culturally significant properties, nominating properties to national and tribal registers of historic places, conducting Section 106 reviews of Federal agency projects on tribal lands, and conducting educational programs on the importance of preserving historic properties.

8100 - THE FOUNDATIONS FOR MANAGING CULTURAL RESOURCES – (Public)

(1) For tribes with approved programs, Field Office managers consult with the THPO in lieu of the SHPO for undertakings occurring on, or affecting historic properties on, tribal lands.

(2) For other tribes, Field Office managers consult a tribally designated representative in addition to the SHPO during review of projects occurring on, or affecting historic properties on, their tribal lands.

b. In accordance with Section 101(d)(6) of the National Historic Preservation Act, Indian tribes often choose to designate the THPO as the tribal representative to assist Federal officials in identifying tribally significant, National Register-eligible properties, potentially affected by a proposed Federal undertaking on non-tribal lands. Although the same individual or office is involved, this is a role completely apart from the THPO's roles with respect to the tribe's preservation program and tribal lands.

(1) Concerning non-tribal lands, THPOs do not assume any of the SHPO's functions.

(2) Concerning non-tribal lands, Field Office managers consult with THPOs only when they have been designated as tribal representatives for purposes of Section 106, for their assistance in identifying and evaluating properties of traditional religious and cultural importance to the tribe. This does not substitute for consultation with SHPO under .09C2e.

(3) Concerning non-tribal lands, THPOs designated as tribal representatives for purposes of Section 106 are acting as tribal representatives, not as THPOs. This distinction and its implications may not always be clear. THPOs do not have management responsibility or authority for tribally significant properties on non-tribal lands.

c. The BLM national Programmatic Agreement does not apply to undertakings on tribal lands. A Field Office manager considering an undertaking on tribal lands complies with 36 CFR Part 800, or where the tribe has entered into an agreement with the Advisory Council, with the tribe's preservation regulations.

d. A tribe's establishment of a tribal preservation program and designation of a THPO often facilitates cooperative opportunities with the tribe, such as sharing information and expertise.

8100 - THE FOUNDATIONS FOR MANAGING CULTURAL RESOURCES – (Public)

2. State Historic Preservation Officer (SHPO). Field Office managers work closely with SHPOs to satisfy the working relationships set forth in the national Programmatic Agreement, and the State's BLM-SHPO Protocols developed to implement the Programmatic Agreement. The BLM cooperates with the SHPO in fulfilling functions that relate to BLM. These include:

- a. Assisting in data base automation and development of GIS capability.
- b. Developing and implementing a comprehensive State historic preservation plan. (See 36 CFR Part 61.)
- c. Directing and conducting a continuing statewide survey of cultural properties and maintaining inventories of such properties.
- d. Reviewing and commenting on all BLM National Register nominations and BLM requests for formal determinations of eligibility from the Keeper of the National Register.
- e. Reviewing and commenting on documentation submitted by BLM for compliance with Section 106 of the National Historic Preservation Act.
- f. It is not normally the SHPO's function to perform surveys or evaluate, nominate, or manage cultural properties on BLM-administered lands, unless arranged through agreements, contracts, or permits.

2. Certified Local Governments. Any affected local government with a historic preservation program that has been certified pursuant to section 101(c)(1) of the National Historic Preservation Act (see Appendix 5) may assume parts of the Section 106 consultation duties of the SHPO if the local government, the SHPO, and the Advisory Council agree.

D. Relationship to Other Countries' Historic Preservation Programs

1. Account for Effects in Other Countries. In Section 402 of the National Historic Preservation Act Amendments of 1980 (P.L. 96-515 Title IV, 16 U.S.C. Sec. 470a-2) the Congress directs Federal agencies to take into account the effects of their undertakings on significant cultural resources in other countries.

a. Cross-border Linear Projects. The BLM does not conduct or authorize undertakings outside the United States. However, the BLM does sometimes process applications for the U.S. portions of cross-border linear projects, such as oil and gas pipelines, that could cause or enable adverse effects on another country's significant cultural resources, effects that might not otherwise occur except for the U.S. participation.

b. DOE Lead. International energy projects require Presidential permits. The Department of Energy (DOE) has been assigned the lead role on such projects, including compliance responsibility for the National Historic Preservation Act (NHPA). On occasion the BLM might agree to carry out compliance activities on DOE's behalf.

8100 - THE FOUNDATIONS FOR MANAGING CULTURAL RESOURCES – (Public)

2. Contact, Communication, and Coordination. When carrying out the lead NHPA role for a proposed cross-border undertaking, the BLM lacks authority to require another country's significant cultural resources to be identified, or for adverse effects to them to be avoided or mitigated. Nevertheless, the Congress's purpose is clear, that Federal agencies should not be heedless of adverse effects that United States involvement might generate on significant cultural resources outside U.S. borders. The BLM will fulfill Section 402's purpose as follows:

a. When the BLM and Department of Energy agree that the BLM will fulfill the Federal Government's NHPA compliance responsibilities for a proposed cross-border undertaking that would potentially affect significant cultural resources outside the United States, the responsible BLM manager shall contact counterpart officials in the other country and shall facilitate communication among government agencies and proponent companies in both countries. The aim of contact and communication is to alert officials in the other country so that they may appropriately direct project-related activities and account for the project's potential effects on significant cultural resources.

b. The State Historic Preservation Officer and the Advisory Council on Historic Preservation must be involved in the historic preservation review for the U.S. portion of the project, according to provisions of the BLM national Programmatic Agreement and State protocols. They do not, however, have any statutory role in the consideration of effects to significant cultural resources outside the United States, and they are not to be formally involved in cross-border coordination.

8100 - THE FOUNDATIONS FOR MANAGING CULTURAL RESOURCES – (Public)

.1 National Programmatic Agreement Regulates BLM's Compliance with NHPA. The Programmatic Agreement (PA) executed by the BLM, the Advisory Council on Historic Preservation (Council), and the National Conference of State Historic Preservation Officers (NCSHPO) on March 26, 1997, legally replaces 36 CFR Part 800, the Council's governmentwide regulations, as the procedural basis for BLM managers to meet their responsibilities under Sections 106, 110(f), and 111(a) of the National Historic Preservation Act (NHPA)(See App. 15).

.11 Historic Preservation is Integrated into Multiple-Use Management under FLPMA. The parties to the PA agreed that historic preservation in BLM will be best achieved by integrating NHPA responsibilities as fully as possible into land-use planning and resource management procedures under FLPMA. Correspondingly, management of the public lands and other public land resources will benefit from early attention to the statutory authorities, executive orders and national policies concerning cultural resources.

.12 Authority to Implement the Programmatic Agreement is Provisional. The PA is based on the Council's and NCSHPO's recognition that BLM is capable of assuming more historic preservation responsibility without case-by-case Council and SHPO oversight, because of strategically placed professional staff, well developed cultural resource management direction (this manual series), and its managers' commitment to preservation goals, as demonstrated by a history of good performance. The parties agreed that the BLM could implement the PA after completing actions summarized in .13. At the same time, the PA is clear that these capabilities must be maintained in order to keep the PA in effect.

.13 BLM Standards Required under the National Programmatic Agreement. To replace the preservation oversight usually provided by the SHPO and Council, the Director agreed to:

A. Establish a Preservation Board to advise the BLM's line managers (the Director, State Directors and Field Office managers). (See Appendix 14 for Board composition and duties.)

B. Update the national BLM policies and procedures (the 8100 manual series) with the advice of the Preservation Board and assisted by the Council, the NCSHPO, the SHPOs and other participating parties, to fit their larger role under the PA.

C. Develop State Director/SHPO operating protocols, to tailor the national policies and procedures to State-specific circumstances and needs.

D. Train all Field Office managers and their cultural heritage staffs in the operation of the national policies and procedures and the State protocols.

E. Certify that Field Offices under a State Director's jurisdiction are appropriately qualified to employ the streamlined procedures developed pursuant to the PA.

8100 - THE FOUNDATIONS FOR MANAGING CULTURAL RESOURCES – (Public)

.14 Thresholds for Council Participation. The parties to the PA agreed that BLM will request the Council's participation in case of the following, and other similar occasions as the Field Office manager deems appropriate:

- A. Nonroutine interstate and/or interagency projects or programs.
- B. Undertakings directly or adversely affecting National Historic Landmarks or National Register eligible properties of national significance.
- C. Highly controversial undertakings, when BLM, a SHPO, an Indian tribe, a local government, or an applicant for a BLM authorization requests Council review. (In general, "highly controversial" means cases where historic preservation issues are unusually contentious and are the subject of media, congressional, and public inquiries.)

8100 - THE FOUNDATIONS FOR MANAGING CULTURAL RESOURCES – (Public)

.2 Personnel Qualifications and Administrative Requirements. Only properly qualified personnel may complete the professional staff work and implement the streamlined procedures developed pursuant to the PA.

.21 Personnel Must Meet Permit Standards. Provisions of Section 4 of the Archaeological Resources Protection Act (BLM Manual Section 8100, Appendix 8) and 43 CFR Part 7 regarding qualifications, conditions, and Native American religious and cultural consideration, must be met whether individuals approved to conduct the work are permittees, government employees, government contractors, or volunteers.

.22 Alternate Documentation Allowed for Official Duties. To meet legal requirements without unnecessary duplication of administrative effort, 43 CFR 7.5(c) provides that persons carrying out official agency management duties under the Federal land manager's direction do not need to hold a permit per se. However, the Federal land manager must document that the professional qualifications standards of the regulations (43 CFR 7.8) have been met; must set appropriate conditions in writing consistent with the regulations (43 CFR 7.9); and must ensure that carrying out of any official duties that are likely to result in harm to or destruction of a known Indian tribal religious or cultural site have been the subject of notification and consultation, as appropriate, consistent with the regulations (43 CFR 7.7).

.23 BLM Personnel.

A. Specialists. Only professionally qualified specialists, trained and experienced in the appropriate discipline(s), may undertake or oversee inventories and evaluations. Only appropriately qualified specialists may make evaluation and management recommendations. Entry-grade and other junior cultural resource specialists may not be assigned independent cultural resource work beyond the level of their qualifications. Only properly qualified specialists may review and recommend approval of cultural resource work done by other specialists, technical assistants, contractors, permittees, cooperating agencies, and volunteers.

B. Technical Assistants. Adequately trained and experienced BLM cultural resource technical assistants (paraprofessionals) (see .21 and .22), under the direction of an appropriately qualified BLM cultural resource specialist, may assist in carrying out inventory tasks. "Under the direction" includes assigning, checking, approving, and accepting professional responsibility for the assistant's work. The specialist decides whether to assign a technical assistant on a project, based on the assistant's training and experience and the anticipated sensitivity of the project area. The specialist is responsible for evaluating cultural resources, recommending mitigation measures, writing final reports, and ensuring compliance with the national Programmatic Agreement and the State's BLM-SHPO Protocol in all instances where a technical assistant records cultural resources. All technical assistants' work must be approved in writing by a qualified BLM professional cultural resource specialist before it can be used as a basis for management decisions or included in cultural resource records systems or data bases. Technical assistants may not direct others participating in inventory work.

8100 - THE FOUNDATIONS FOR MANAGING CULTURAL RESOURCES – (Public)

C. Documentation of Qualifications. Required qualifications, appropriate to the work to be performed, and qualification criteria are identified through the position description, vacancy announcement, and rating plan prepared at the time of recruitment. Documentation that the criteria are met is included in the Merit Promotion Case File (BLM Manual Section 1400-335). Qualifications upgraded through training and experience on the job may be documented through certificates of training, completed prior-year performance review forms, and other relevant documentation included in the employee's official personnel file. Field Office managers must document the professional staff capability available to them as part of satisfying the provisions of the national Programmatic Agreement, and must maintain sufficient professional staff capability to operate under the Agreement.

D. Documentation of Assignments. Supervisors are responsible for ensuring that the level of work assigned and performed is appropriate to an employee's qualifications. It is the employee's ethical responsibility to inform the supervisor when an assignment would go beyond the employee's qualifications. Field Office managers must ensure that staff assignments are appropriately matched to staff members' professional qualifications in order to operate under the national Programmatic Agreement.

.24 Non-BLM Personnel. Inventory and evaluation tasks performed by non-BLM personnel must be overseen and accepted by an appropriately qualified BLM cultural resource specialist, whose recommendations must be approved by the responsible manager.

8100 - THE FOUNDATIONS FOR MANAGING CULTURAL RESOURCES – (Public)

A. Contractors. BLM may obtain professional services for inventories and/or evaluations through contracts with appropriately qualified non-Federal sources. Potential contractors' minimum required qualifications are specified in the request for proposals (see BLM Manual Handbook 1510-1, Ch. VIII). Assessment of offerors' qualifications is performed by the Technical Proposal Evaluation Committee and Contracting Officer, and documented in the procurement record. Appropriate conditions are specified in the contract. Notification of Indian tribes, if necessary, is the responsibility of the program office originating the procurement, and should precede the procurement. Any notification and any subsequent consultation should be documented in both the procurement record and the related job file.

B. Third-Party Consultants. Land use applicants often obtain the services of professionally qualified cultural resource consultants to conduct inventory and/or evaluation tasks to expedite BLM processing of their land use applications. Permit provisions in BLM Manual Section 8150 govern consultants proposing to conduct inventory and/or evaluation tasks on public lands. Permittees' qualifications to do specific work or evaluate specific resources are documented in the permit file. Terms and conditions are incorporated in the permit. Any required BLM notification of Indian tribes and subsequent BLM consultation is documented in the permit file.

C. Cooperators. Qualifications, conditions, and any required notifications relating to work done cooperatively by another agency or a partner is documented in the same general manner as for contractors or third-party consultants, as appropriate, in the cooperative agreement file. (See BLM Manual Sections 1510 and 1780.)

D. Volunteers. Appropriately trained volunteers may assist in conducting inventories. Professionally qualified volunteers may conduct inventory work in the manner of a contractor or third-party consultant, under the direction of a qualified BLM cultural resource specialist, at the discretion of the responsible manager and with the concurrence of the cultural resource specialist. Less qualified volunteers may be used under the direct supervision of a qualified BLM cultural resource specialist, as appropriate. Volunteers' qualifications shall be reviewed and documented. The appropriate assignment of volunteers shall be documented in individual volunteer services agreements (Form 1114-4, BLM Manual Section 1114).

8100 - THE FOUNDATIONS FOR MANAGING CULTURAL RESOURCES – (Public)

.3 Preparing and Distributing Annual Reports. The BLM cooperates with the National Park Service in meeting the Secretary's requirements to report annually to the Congress under the Archeological and Historic Preservation Act (Appendix 4) and the Archaeological Resources Protection Act (Appendix 8). In addition, the national PA (see Appendix 13, item 9.a.) obligates each State Director to prepare an annual report in consultation with the appropriate SHPO(s), outlining the preservation activities conducted under the PA in the preceding year. Annual cultural resource data is also integrated into the Public Land Statistics, Chief Financial Officers/Stewardship Assets, and “Public Rewards from Public Lands” reports.

.31 Data Compilation. Field Offices should record pertinent data continually, as the data are being generated, and should automate the recording process so that data fields can be tabulated with minimum effort at any time. To the extent possible, compilation of PA-related data into the State Director's report format should be timed to coincide with compilation of the Secretary's annual report data.

.32 Report Content. Annual reports should include the following information.

A. Secretary's Report.

1. Tabular data on cultural resource inventories, recorded properties, National Register evaluations, cultural resource overviews and data reviews, unanticipated discoveries, data recovery projects, and archaeological permitting.

2. Narratives on agency highlights, including accomplishments in public outreach, heritage education, collections management, and data automation.

3. Listing of Outlaw Treachery (LOOT) forms that describe law enforcement prosecutions and convictions of archaeological crimes.

B. Programmatic Agreement Report.

1. Statistical information on resource inventories, recorded properties, National Register listings and evaluations, resource overviews, properties physically and administratively protected, mitigation and data recovery, and cultural resource use permits.

2. Progress in implementing the national Programmatic Agreement including working with State Historic Preservation Officers to automate existing cultural resource site data, synthesize existing cultural resource inventory information and complete historic context documents.

3. Public benefits projects resulting from cost savings realized through implementation of the national PA.

8100 - THE FOUNDATIONS FOR MANAGING CULTURAL RESOURCES – (Public)

C. Public Land Statistics Report.

1. Statistical information on resource inventories, recorded properties, and cultural resource use permits.

D. Chief Financial Officer/Stewardship Assets Report.

1. Statistical information on resource inventories, recorded properties, cultural resource use permits, curatorial facilities holding BLM museum objects

2. Narratives on agency highlights, including accomplishments in public outreach, heritage education, collections management, and data automation.

3. Progress in implementing the national Programmatic Agreement including working with State Historic Preservation Officers to automate existing cultural resource site data, synthesize existing cultural resource inventory information and complete historic context documents.

E. Public Rewards from Public Lands. Statistical information on resource inventories and recorded properties by State.

.33 Report Distribution.

A. Secretary's Report. The Director will annually submit a compilation of the preceding fiscal year's cultural resource accomplishments, including numerical and narrative information and highlights, to the National Park Service for incorporation into the Secretary's Report to Congress. The NPS will be responsible for distribution of this report, including dissemination to BLM field office specialists.

B. Programmatic Agreement Report. Each State Director will provide copies to the appropriate SHPO(s), the Council, the Preservation Board, and interested parties who have made themselves known to the State Director, and will make copies available to the public on request.

8100 - THE FOUNDATIONS FOR MANAGING CULTURAL RESOURCES – (Public)

Glossary of Terms

-A-

adverse effect: alteration of the characteristics of a cultural property that may qualify it for the National Register, thereby reducing or eliminating the resource's use potential, diminishing its integrity, or disqualifying it from Register eligibility. Determination of adverse effect to cultural properties is guided by criteria in the Advisory Council's regulations, 36 CFR Part 800.

Advisory Council: the Advisory Council on Historic Preservation as established by Title II of the National Historic Preservation Act. (See Appendix 5.) The Advisory Council is an independent executive agency that reports to and advises the President and the Congress on historic preservation matters. Headquartered in Washington, D.C., the Advisory Council also has a staff office in Denver, Colorado.

"archaeological resource": a term with legal definition and application (see Appendix 8, Section 3) which means any material remains of human life or activities that are at least 100 years of age, and that are of archaeological interest, as further defined at 43 CFR 7.3. (See "archaeology.")

archaeology: the subfield of anthropology engaged in recovering, analyzing, interpreting, and explaining evidence of the human prehistoric and historic past; the time-depth arm of anthropology. Archaeology as a scholarly endeavor is not limited in the scope of its subject matter by legal or regulatory provisions such as the minimum age assigned to archaeological resources (for enforcement purposes) by the Archaeological Resources Protection Act. (See "archaeological resource.") (Note on spelling: In BLM, retention of the second 'a' in 'archaeology' is preferred except when quoting material that originally used the alternate spelling.)

artifact: literally, human made, not natural; any object that shows evidence of human manufacture, modification, or use. In common usage, normally refers to portable prehistoric items such as implements made of stone, bone, pottery, or other durable material. Compare 43 CFR 7.3.

avoidance: preventing a potential adverse effect from occurring by the partial or complete redesign or relocation of a proposed land use.

-C-

clearance: a word best avoided; it has no legal meaning in the context of section 106 or other compliance, and its use tends to suggest expectations that may be overly simplified or inappropriate to required actions.

8100 - THE FOUNDATIONS FOR MANAGING CULTURAL RESOURCES – (Public)

compliance: adherence to specific provisions of any law, executive order, regulation, authorization, agreement, or similar legal instrument. In cultural resource management, most commonly used to mean documented observance of the regulated procedural requirements of Section 106 of the National Historic Preservation Act, or, for BLM, documented observance of the national Programmatic Agreement and State Director/SHPO protocols.

Council: (See "Advisory Council.")

cultural: of or pertaining to culture, the regularized, patterned, learned behavior shared by members of an interacting social group and passed from generation to generation, comprising the group's technology, economy, religion, arts, social organization, and more. A group's partly subconscious consensus on how things are done. Aspects of culture vary among contemporary groups and change through time. Culture may be viewed as a complex set of instrumental behaviors interposed between a group and its natural and social environment, and may be said to constitute the group's adaptation to its environment.

cultural resource or cultural property: a definite location of human activity, occupation, or use identifiable through field inventory (survey), historical documentation, or oral evidence. The term includes archaeological, historic, or architectural sites, structures, or places with important public and scientific uses, and may include definite locations (sites or places) of traditional cultural or religious importance to specified social and/or cultural groups. (Cf. "traditional cultural property"; see "definite location".) Cultural resources are concrete, material places and things that are located, classified, ranked, and managed through the system of identifying, protecting, and utilizing for public benefit described in this Manual series. They may be but are not necessarily eligible for the National Register (See "historic property" or "historic resource".)

cultural resource inventory classes: (See BLM Manual Section 8110.21.)

1. class I - existing information inventory: a study of published and unpublished documents, records, files, registers, and other sources, resulting in analysis and synthesis of all reasonably available data. Class I inventories encompass prehistoric, historic, and ethnological/sociological elements, and are in large part chronicles of past land uses. They may have major relevance to current land use decisions.
2. class II - probabilistic field survey: a statistically based sample survey designed to help characterize the probable density, diversity, and distribution of archaeological properties in a large area by interpreting the results of surveying limited and discontinuous portions of the target area. (Cf. "reconnaissance survey".)
3. class III - intensive field survey: a continuous, intensive survey of an entire target area, aimed at locating and recording all archaeological properties that have surface indications, by walking close-interval parallel transects until the area has been thoroughly examined. Class III methods vary geographically, conforming to the prevailing standards for the region involved.

8100 - THE FOUNDATIONS FOR MANAGING CULTURAL RESOURCES – (Public)

cultural resource management: in a strict sense, the management of cultural resources begins when the responsible manager's cultural resource protection and use decisions are implemented. Less precisely, cultural resource management is often considered to include the inventory, evaluation, and planning steps that precede the manager's decisions and their implementation. The BLM's cultural resource management program includes all the program elements that contribute to management. Cultural resource management in BLM may be characterized as the process by which a Field Office manager (1) becomes informed of the nature of the cultural resources known and expected to occur within their area of administrative responsibility, (2) assesses their various use potentials, (3) assigns uses, thereby accepting a commitment to safeguard those uses, (4) takes planned steps to protect or realize assigned uses, and (5) authorizes appropriate uses.

cultural resource management manuals: the 8100 Manual series, covering the various aspects of BLM's cultural resource management program.

cultural resource manager: any line manager (Field Office manager, State Director, Director) whose responsibilities and decisionmaking authority include cultural resource management.

cultural resource specialist: a professionally qualified anthropologist, archaeologist, architectural historian, historian, historical architect, or similar professional who serves in a staff or advisory capacity and provides professional recommendations and services to assist managers in meeting their cultural resource management responsibilities (see .2).

-D-

decision: an authorized manager's exercise of choice within the limits of discretionary authority. This is in contrast to mere fulfillment of ministerial functions with prescribed conclusions determined by findings of fact, such as approving a mineral patent application upon making a finding that the requirements of law and regulation have been met.

definite location: having discernible, mappable, more or less exact limits or boundaries, on a scale that can be established by a survey crew using conventional sensing and recording equipment, by an informant's direct on-the-ground indication, or by precise placement in a documentary source (see "cultural resource or cultural property").

-E-

effect: any change in the characteristics that contribute to the use(s) determined appropriate for a cultural resource, or to the qualities that qualify a cultural property for the National Register. Determination of effect to cultural properties is guided by criteria in the regulations of the Advisory Council, 36 CFR Part 800.

8100 - THE FOUNDATIONS FOR MANAGING CULTURAL RESOURCES – (Public)

evaluation:

1. with regard to BLM planning: the process of determining the public and scientific use potential of cultural resources through (a) the analysis of cultural resource inventory data, (b) the application of professional judgment to identify characteristics contributing to possible uses, and (c) the recommendation of appropriate uses. (For definitions of use categories, see BLM Manual Section 8110.4.)
2. with regard to the National Register of Historic Places: the application of the National Register eligibility criteria, 36 CFR 60.4. (See BLM Manual Section 8110.3.)

excavation: the controlled, scientific recovery of subsurface materials and information from an archaeological property, through professionally applied archaeological techniques. (See also "recovery of cultural resource data.")

-H-

historical archaeology: the branch of archaeology that investigates cultural properties dating to the historic period by combining archaeological methods and documentary research.

"historic context": "an organizing structure for interpreting history that groups information about historic properties that share a common theme, common geographical area, and a common time period. The development of historic contexts is a foundation for decisions about the planning, identification, evaluation, registration, and treatment of historic properties, based upon comparative historic significance" (quoted from National Register Bulletin No. 15, Glossary).

"historic preservation": "includes identification, evaluation, recordation, documentation, curation, acquisition, protection, management, rehabilitation, restoration, stabilization, maintenance, reconstruction, or any combination of the foregoing activities" (quoted from National Historic Preservation Act, Section 301; Appendix 5) in relation to properties significant in American history, architecture, archaeology, or culture.

"historic property" or "historic resource": "any prehistoric or historic district, site, building, structure, or object included in, or eligible for inclusion in, the National Register. The term includes, for purposes of these regulations, artifacts, records, and remains that are related to and located within such properties. The term 'eligible for inclusion in the National Register' includes both properties formally determined as such by the Secretary of the Interior and all other properties that meet National Register listing criteria" (quoted from 36 CFR 800.2(e); compare National Historic Preservation Act, Section 301, Appendix 5). (See also "cultural resource - cultural property." "Cultural property" is an analogous BLM term not limited by National Register status.)

8100 - THE FOUNDATIONS FOR MANAGING CULTURAL RESOURCES – (Public)

-I-

identification: the general term for the component of BLM's cultural resource management program that includes locating, recording, and determining the legal, scientific, public, and conservation values of cultural resources, i.e., giving cultural resources a management identity. (See "inventory" and "evaluation.")

Indian tribe or tribe: as defined in Section 301 of the National Historic Preservation Act, "an Indian tribe, band, nation, or other organized group or community, including a Native village, Regional Corporation or Village Corporation, as those terms are defined in section 3 of the Alaska Native Claims Settlement Act [43 U.S.C. 1602], which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians." (See Appendix 5.)

important: with regard to cultural resources, determined to be worthy of long-term management because of identified public, tribal, or scientific value, as established through inventory, consultation, evaluation and planning.

inadvertent: inattentive, unmindful; literally, not turning (one's attention) to. (Note that NAGPRA, .03K, uses this word in a way that is not consistent with standard definitions, to mean something similar to unintended, unexpected, or unplanned.)

inventory: a term used to refer to both a record of cultural resources known to occur within a defined geographic area, and the methods used in developing the record. Depending on intended applications for the data, inventories may be based on (a) compilation and synthesis of previously recorded cultural resource data from archival, library, and other indirect sources; (b) systematic examinations of the land surface and natural exposures of the subsurface (survey) for indications of past human activity as represented by artificial modifications of the land and/or the presence of artifacts; and (c) the use of interviews and related means of locating and describing previously unrecorded or incompletely documented cultural resources, including those that may not be identifiable through physical examination. (See "cultural resource inventory classes.")

-M-

mitigation: lessening the severity of a potential adverse effect by application of appropriate protection measures, such as the recovery of archaeological data from sites, or other means. (Note on usage: One mitigates adverse effects or impacts, i.e., lessens them. One does not mitigate cultural resources.)

8100 - THE FOUNDATIONS FOR MANAGING CULTURAL RESOURCES – (Public)

-N-

National Register: the National Register of Historic Places, expanded and maintained by the Secretary of the Interior, as authorized by section 2(b) of the Historic Sites Act and section 101(a)(1)(A) of the National Historic Preservation Act. The National Register lists cultural properties found to qualify for inclusion because of their local, State, or national significance. Eligibility criteria and nomination procedures are found in 36 CFR Part 60. The Secretary's administrative responsibility for the National Register is delegated to the National Park Service.

-P-

professionally qualified: cultural resource staff specialists are deemed minimally professionally qualified when found to meet Office of Personnel Management (OPM) degree requirements and other qualification standards for their occupation series (GS-193 archaeologist, GS-170 historian, etc.). Additional training and supervised experience beyond the minimum qualifications are necessary for most full-performance field positions. Staff archaeologists carrying out official agency duties that for nonemployees would require a permit must meet the same professional qualifications as required of permittees in ARPA and 43 CFR Part 7 (see BLM Manual Sections 8100.21 and 8150.12B2). It is incumbent on managers and their staff specialists to assess training and experience needs on a regular basis, in order to ensure that specialists can carry out all preservation assignments effectively (see .04C, .04D, and .21).

programmatic agreement: an agreement among the responsible agency official, the Advisory Council, the appropriate State Historic Preservation Officer(s) or the National Conference of SHPOs, and others as invited, establishing alternative agency procedures to substitute for the governmentwide procedures in 36 CFR Part 800 for complying with Section 106 of the National Historic Preservation Act (see "Section 106"). The BLM's national Programmatic Agreement, which applies to all BLM activities below specified thresholds, provides regulatory relief in most instances from the requirement for case-by-case review by SHPOs and the Advisory Council, in exchange for managers' maintenance of appropriate staff capability and observance of internal BLM standards as set out in the 8100 Manual series. (See Appendices 13 and 14.)

proposed land use: any use of lands or resources, BLM-administered or not, that requires a BLM manager's formal approval, whether proposed by BLM or by an outside applicant. When a decision to approve a proposed land use might affect cultural properties eligible for the National Register, the term is synonymous with "undertaking" as used in the National Historic Preservation Act (see "undertaking") and is subject to compliance with Section 106 of the Act.

8100 - THE FOUNDATIONS FOR MANAGING CULTURAL RESOURCES – (Public)

protection measures:

1. physical protection measure: any physical means, such as stabilization of elements of a cultural property or its immediate environment, placement of physical barriers, or similar measures, employed to arrest, slow the rate of, or divert the source of natural or human-caused deterioration to a cultural property.
2. administrative protection measure: any nonphysical means, such as withdrawal, closure, or other measures, employed to limit conflicting use of, or access to, an area containing or importantly pertaining to a cultural resource undergoing or threatened by deterioration.

-R-

reconnaissance survey: field survey that is less systematic, less intensive, or otherwise does not fully meet inventory standards (see "cultural resource inventory classes - class II and class III"). Reconnaissance surveys may be useful for checking class I inventory or class II survey conclusions, or for developing recommendations about further survey needs in previously unsurveyed areas. Other terms sometimes applied to similar kinds of survey include "judgmental," "intuitive," "opportunistic," and "purposive."

recovery of cultural resource data: the professional application of archaeological techniques of controlled observation, collection, excavation and/or removal of physical remains, including analysis, interpretation, explanation, and preservation of recovered remains and associated records in an appropriate curatorial facility, used as a means of protection. Data recovery may sometimes employ professional collection of data such as oral histories, genealogies, folklore, and related information to portray the social significance of the affected resources.

resource: in this context, something useful held in reserve until needed.

-S-

salvage (See "recovery of cultural resource data".)

Secretary: the Secretary of the Interior.

Section 106: the section of the National Historic Preservation Act (see Appendix 5) that requires Federal agency officials (1) to take into account the effects of their undertakings on properties eligible for or included in the National Register of Historic Places, and (2) to afford the Advisory Council a reasonable opportunity to comment on the undertaking. 36 CFR Part 800 implements section 106. The BLM complies with Section 106 and 36 CFR 800 by following its national Programmatic Agreement (Appendix 12), BLM/SHPO protocols established pursuant to the national Programmatic Agreement, and BLM Manuals in this 8100 series.

8100 - THE FOUNDATIONS FOR MANAGING CULTURAL RESOURCES – (Public)

Section 110: the section of the National Historic Preservation Act (see Appendix 5) that requires Federal agency officials to preserve historic properties owned or controlled by the agency, including, among other things, (1) identifying, evaluating and nominating properties to the National Register, (2) managing and maintaining such properties in ways consistent with their preservation value, (3) consulting with Indian tribes and Federal, State and local agencies, and (4) carrying out agency programs and projects, including those conducted under permit or other authorization, in accordance with the purposes of the Act.

"significance" or "significant": terms with legal/regulatory application (see National Historic Preservation Act, Section 101(a), Appendix 5; and 36 CFR Part 60), which mean that a property meets the National Register eligibility criteria. This is the only technical, operational meaning. Cultural properties may be found to qualify for the National Register at local, State, or national levels of significance.

site: the location of activities or events, often used loosely to mean the same as cultural resource. In archaeological jargon, the basic meaning of site is a place where archaeological evidence occurs, with precise meanings varying considerably from region to region and among recording institutions within regions. Section 4(c) of the Archaeological Resources Protection Act (see Appendix 8) uses "site" in the term "religious or cultural site" in its common dictionary sense, i.e., as a location, not as a synonym for "archaeological resource." If the Congress had meant "archaeological resource" in Section 4(c), the drafters either would have used that defined term or would have defined "site" to mean the same as "archaeological resource." According to the Glossary of National Register Terms in National Register Bulletin No. 16A, site means "location of a significant event, a prehistoric or historic occupation or activity, or a building or structure, whether standing, ruined, or vanished, where the location itself possesses historic, cultural, or archeological value regardless of any existing structure."

split estate: real property for which ownership is split; the surface estate is owned by one entity and the mineral estate is held by another.

survey: the application of professional methods and techniques for field inventory, used to locate and identify cultural properties. (See "cultural resource inventory classes - class II and class III," and "reconnaissance survey.")

8100 - THE FOUNDATIONS FOR MANAGING CULTURAL RESOURCES – (Public)

-T-

tradition: longstanding, socially conveyed, customary patterns of thought, cultural expression, and behavior, such as religious beliefs and practices, social customs, and land or resource uses. Traditions are shared generally within a social and/or cultural group and span generations.

traditional: conforming to tradition.

traditional cultural property: a property that derives significance from traditional values associated with it by a social and/or cultural group such as an Indian tribe or local community. See “cultural resource or cultural property” and “definite location.” A traditional cultural property may qualify for the National Register if it meets the criteria and criteria exceptions at 36 CFR 60.4. See National Register Bulletin 38.

traditional value: a social and/or cultural group’s traditional systems of religious belief, cultural practice, or social interaction, not closely identified with definite locations. Another group’s shared values are abstract, nonmaterial, ascribed ideas that one cannot know about without being told. Traditional values are taken into account through public participation during planning and environmental analysis or through tribal consultation, as applicable. Traditional values may imbue a place with historic significance (see “traditional cultural property”).

treasure or treasure trove: generally taken to mean precious metals in coin, plate, or bullion, loose gem stones, or other monetarily valuable materials. The term and a presumption of associated legal rights derive from English common law. For BLM’s policy negating salvors’ presumed appropriation rights over Government property, see BLM Manual Section 8140.4.

tribal land: as defined in Section 301 of the National Historic Preservation Act (see Appendix 5): "(A) all lands within the exterior boundaries of any Indian reservation; and (B) all dependent Indian communities." The BLM very rarely has any involvement with tribal land in the context of compliance with the NHPA.

Tribal Historic Preservation Officer (THPO): a term adopted in practice to indicate the “tribal preservation official” authorized in Section 101(d)(2) of the National Historic Preservation Act (NHPA; see Appendix 5) : "the tribe designates a tribal preservation official to administer the tribal historic preservation program, through appointment by the tribe's chief governing authority or as a tribal ordinance may otherwise provide". A THPO may assume some or all duties of the State Historic Preservation Officer concerning tribal land, in accord with the Secretary's approval of the tribe's historic preservation program. While a THPO’s authority does not extend to nontribal lands, a THPO is sometimes designated to represent the tribe in consultation relative to NHPA Section 101(d)(6). See Manual Section 8120.08 and Handbook H-8120-1.

tribe: (See "Indian tribe or tribe".)

8100 - THE FOUNDATIONS FOR MANAGING CULTURAL RESOURCES – (Public)

-U-

"undertaking": a term with legal definition and application i.e., “actions carried out by or on behalf of the agency; those carried out with Federal financial assistance; those requiring a Federal permit, license, or approval; and those subject to State or local regulation administered pursuant to a delegation or approval by a federal agency.” (See National Historic Preservation Act, Section 106 and Section 301(7), Appendix 5; 36 CFR Part 800). However, Section 106 does not apply to actions subject to State or local regulation only. The vast majority of land use authorizations approved by BLM, as well as BLM-funded projects, are undertakings for purposes of Section 106 of the NHPA. (See also "decision" and "proposed land use.")

use categories: within the framework of these manuals, this term refers to six BLM categories (scientific use, conservation for future use, traditional use, public use, experimental use, discharged from management) employed by Field Office managers to connect identified cultural resources with decisions about their protection and utilization (see BLM Manual Section 8110.42). All cultural resources have uses, to which they can often be assigned even before they have been individually identified. Use allocations allow Field Office managers to know in advance how to respond to potential conflicts between cultural resources and proposed land uses. A cultural property may be allocated to more than one use category. Although some scientific and experimental uses result in physical alteration of resources, use does not imply consumptive use. Managed use of cultural resources can be fully compatible with long-range preservation, and also the means by which preservation is achieved.

Appendix 1  
(.03A)

8100 - CULTURAL RESOURCE MANAGEMENT - (Public)

**Antiquities Act of 1906**

[Public–No. 209]

**An Act For the preservation of American Antiquities**

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That any person who shall appropriate, excavate, injure, or destroy any historic or prehistoric ruin or monument, or any object of antiquity, situated on lands owned or controlled by the Government of the United States, without the permission of the Secretary of the Department of the Government having jurisdiction over the lands on which said antiquities are situated, shall, upon conviction, be fined in a sum of not more than five hundred dollars or be imprisoned for a period of not more than ninety days, or shall suffer both fine and imprisonment, in the discretion of the court.

SEC. 2. That the President of the United States is hereby authorized, in his discretion, to declare by public proclamation historic landmarks, historic and prehistoric structures, and other objects of historic or scientific interest that are situated upon the lands owned or controlled by the Government of the United States to be national monuments, and may reserve as a part thereof parcels of land, the limits of which in all cases shall be confined to the smallest area compatible with proper care and management of the objects to be protected: *Provided,* That when such objects are situated upon a tract covered by a bona fide unperfected claim or held in private ownership, the tract, or so much thereof as may be necessary for the proper care and management of the object, may be relinquished to the Government, and the Secretary of the Interior is hereby authorized to accept the relinquishment of such tracts in behalf of the Government of the United States.

SEC. 3. That permits for the examination of ruins, the excavation of archaeological sites, and the gathering of objects of antiquity upon the lands under their respective jurisdictions may be granted by the Secretaries of the Interior, Agriculture, and War to institutions which they may deem properly qualified to conduct such examination, excavation, or gathering, subject to such rules and regulation as they may prescribe: *Provided,* That the examinations, excavations, and gatherings are undertaken for the benefit of reputable museums, universities, colleges, or other recognized scientific or educational institutions, with a view to increasing the knowledge of such objects, and that the gatherings shall be made for permanent preservation in public museums.

SEC. 4. That the Secretaries of the Departments aforesaid shall make and publish from time to time uniform rules and regulations for the purpose of carrying out the provisions of this Act.

Approved, June 8, 1906

8100 - THE FOUNDATIONS FOR MANAGING CULTURAL RESOURCES - (Public)

**Historic Sites Act of 1935**

[PUBLIC—No. 292—74TH CONGRESS]

[S. 2073]

**AN ACT**

**To provide for the preservation of historic American sites, buildings, objects,  
and antiquities of national significance, and for other purposes.**

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That it is hereby declared that it is a national policy to preserve for public use historic sites, buildings and objects of national significance for the inspiration and benefit of the people of the United States.

SEC. 2. The Secretary or the Interior (hereinafter referred to as the Secretary), through the National Park Service, for the purposes of effectuating the policy expressed in section 1 hereof, shall have the following powers and perform the following duties and functions:

(a) Secure, collate, and preserve drawings, plans, photographs, and other data of historic and archaeological sites, buildings, and objects.

(b) Make a survey of historic and archaeological sites, buildings, and objects for the purpose of determining which possess exceptional value as commemorating or illustrating the history of the United States.

(c) Make necessary investigations and researches in the United States relating to particular sites, buildings, or objects to obtain true and accurate historical and archaeological facts and information concerning the same.

(d) For the purpose of this Act, acquire in the name of the United States by gift, purchase, or otherwise any property, personal or real, or any interest or estate therein, title to any real property to be satisfactory to the Secretary: *Provided*, That no such property which is owned by any religious or educational institution, or which is owned or administered for the benefit of the public men be so acquired without the consent of the owner: *Provided further*, That no such property shall be acquired or contract or agreement for the acquisition thereof made which will obligate the general fund of the Treasury for the payment of such property, unless or until Congress has appropriated money which is available for that purpose.

(e) Contract and make cooperative agreements with States, municipal subdivisions, corporations, associations, or individuals, with proper bond where deemed advisable, to protect, preserve, maintain, or operate any historic or archaeological building, site, object, or property used in connection therewith for public use, regardless as to whether the title thereto is in the United States: *Provided*, That no contract or cooperative agreement shall be made or entered into which will obligate the general fund of the Treasury unless or until Congress has appropriated money for such purpose.

(f) Restore, reconstruct, rehabilitate, preserve, and maintain historic or prehistoric sites, buildings, objects, and properties of national historical or archaeological significance and where deemed desirable establish and maintain museums in connection therewith.

8100 - THE FOUNDATIONS FOR MANAGING CULTURAL RESOURCES – (Public)

**Historic Sites Act of 1935**

(g) Erect and maintain tablets to mark or commemorate historic or prehistoric places and events of national historical or archaeological significance.

(h) Operate and manage historic and archaeological sites, buildings, and properties acquired under the provisions of this Act together with lands and subordinate buildings for the benefit of the public, such authority to include the power to charge reasonable visitation fees and grant concessions, leases, or permits for the use of land, building space, roads, or trails when necessary or desirable either to accommodate the public or to facilitate administration: *Provided*, That such concessions, leases, or permits, shall be let at competitive bidding, to the person making the highest and best bid.

(i) When the Secretary determines that it would be administratively burdensome to restore reconstruct, operate, or maintain any particular historic or archaeological site, building, or property donated to the United States through the National Park Service, he may cause the same to be done by organizing a corporation for that purpose under the laws of the District of Columbia or any State.

(j) develop an educational program and service for the purpose of making available to the public facts and information pertaining to American historic and archaeological sites, buildings, and properties of national significance. Reasonable charges may be made for the dissemination of any such facts or information.

(k) Perform any and all acts, and. make such rules and regulations not inconsistent with this Act as may be necessary and proper to carry out the provisions thereof. Any person violating any of the regulations authorized by this Act shall be punished by a fine of not more than \$500 and be adjudged to pay all cost of the proceedings.

SEC. 3. A general advisory board to be known as the "Advisory Board on National Parks, Historic Sites, Buildings, and Monuments " is hereby established, to be composed of not to exceed eleven persons, citizens of the United States, to include representatives competent in the fields of history, archaeology, architecture, and human geography, who shall be appointed by the Secretary and serve at his pleasure. The members of such board shall receive no salary but may be paid expenses incidental to travel when engaged in their duties as such members.

It shall be the duty of such board to advise on any matters relating to national parks and to the administration of this Act submitted to it for consideration by the Secretary. It may also recommend policies to the Secretary from time to time pertaining to national parks and to the restoration, reconstruction. conservation, and general administration of historic and archaeological sites, buildings, and properties.

SEC. 4. The Secretary, in administering this Act, is authorized to cooperate with and may seek and accept the assistance of any Federal, State, or municipal department or agency, or any educational or scientific institution, or any patriotic association, or any individual.

(b) When deemed necessary, technical advisory committees may be established to act in an advisory capacity in connection with the restoration or reconstruction of any historic or prehistoric building or structure.

8100 - THE FOUNDATIONS FOR MANAGING CULTURAL RESOURCES – (Public)

**Historic Sites Act of 1935**

(c) Such professional and technical assistance may be employed without regard to the civil-service laws, and such service may be established as may be required to accomplish the purposes of this Act and for which money may be appropriated by Congress or made available by gifts for such purpose.

SEC. 5. Nothing in this Act shall be held to deprive any State, or political subdivision thereof, of its civil and criminal jurisdiction in and over lands acquired by the United States under this Act.

SEC. 6. There is authorized to be appropriated for carrying out the purposes of this Act such sums as the Congress may from time to time determine.

SEC. 7. The provisions of this Act shall control if any of them are in conflict with any other Act or Acts relating to the same subject matter.

Approved, August 21, 1935.

## Reservoir Salvage Act

Public Law 86-523

June 27, 1960

AN ACT

[S. 1185]

To provide for the preservation of historical and archeological data (including relics and specimens) which might otherwise be lost as the result of the construction of a dam.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That it is the purpose of this Act to further the policy set forth in the Act entitled "An Act to provide for the preservation of historic American sites, buildings, objects, and antiquities of national significance, and for other purposes", approved August 21, 1935 (16 U.S.C. 461-467), by specifically providing for the preservation of historical and archeological data (including relics and specimens) which might otherwise be irreparably lost or destroyed as the result of flooding, the building of access roads, the erection of workmen's communities, the relocation of railroads and highways, and other alterations of the terrain caused by the construction of a dam by any agency of the United States, or by any private person or corporation holding a license issued by any such agency.

SEC. 2. (a) Before any agency of the United States shall undertake the construction of a dam, or issue a license to any private individual or corporation for the construction of a dam, it shall give written notice to the Secretary of the Interior setting forth the site of the proposed dam and the approximate area to be flooded and otherwise changed if such construction is undertaken: *Provided*, That with respect to any floodwater retarding dam which provides less than five thousand acre-feet of detention capacity and with respect to any other type of dam which creates a reservoir of less than forty surface acres the provisions of this section shall apply only when the constructing agency, in its preliminary surveys, finds, or is presented with evidence that historical or archeological materials exist or may be present in the proposed reservoir area.

(b) Upon receipt of any notice, as provided in subsection (a), the Secretary of the Interior (hereinafter referred to as the "Secretary"), shall cause a survey to be made of the area proposed to be flooded to ascertain whether such area contains historical and archeological data (including relics and specimens) which should be preserved in the public interest. Any such survey shall be conducted as expeditiously as possible. If, as a result of any such survey, the Secretary shall determine (1) that such data exists in such area, (2) that such data has exceptional historical or archeological significance, and should be collected and preserved in the public interest, and (3) that it is feasible to collect and preserve such data, he shall cause the necessary work to be performed in such area to collect and preserve such data. All such work, shall be performed as expeditiously as possible.

(c) The Secretary shall keep the instigating agency notified at all times of the progress of any survey made under this Act, or of any work undertaken as a result of such survey, in order that there will be as little disruption or delay as possible in the carrying out of the functions of such agency.

8100 - THE FOUNDATIONS FOR MANAGING CULTURAL RESOURCES – (Public)

**Reservoir Salvage Act**

(d) A survey similar to that provided for by section (b) of this section and the work required to be performed as a result thereof shall so far as practicable also be undertaken in connection with any dam the construction of which has been heretofore authorized by any agency of the United States, or by any private person or corporation holding a license issued by any such agency.

(e) The Secretary shall consult with any interested Federal and State agencies, educational and scientific organizations, and private institutions and qualified individuals, with a view to determining the ownership of and the most appropriate repository for any relics and specimens recovered as a result of any work performed as provided for in this section.

SEC. 3. In the administration of this Act, the Secretary may—

(1) enter into contracts or make cooperative agreements with any Federal or State agency, any educational or scientific organization, or any institution, corporation, association, or qualified individual; and

(2) procure the temporary or intermittent services of experts or consultants or organizations thereof as provided in section 15 of the Act of August 2, 1946 (5 U.S.C. 55a); and

(3) accept and utilize funds made available for salvage archeological purposes by any private person or corporations holding a license issued by an agency of the United States for the construction of a dam or other type of water or power control project.

SEC. 4. There are hereby authorized to be appropriated such sums as may be necessary to carry out the purposes of this Act.

Approved June 27, 1960.

8100 - THE FOUNDATIONS FOR MANAGING CULTURAL RESOURCES – (Public)

**Archeological and Historic Preservation Act**

Public Law 93-291

May 24, 1974

AN ACT

[S. 514]

To amend the Act of June 27, 1960 (74 Stat. 220), relating to the preservation of historical and archeological data.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Act entitled "An Act to provide for the preservation of historical and archeological data (including relics and specimens) which might otherwise be lost as the result of the construction of a dam", approved June 27, 1960 (74 Stat .220; 16 U.S.C. 469), is amended as follows:*

(1) In section 1, after "result of" insert "(1)" and delete "agency." and insert "agency or (2) any alteration of the terrain caused as a result of any Federal construction project or federally licensed activity or program."

(2) In section 2, change "SEC. 2. (a) ", to "SEC. 2."; after "Secretary of the Interior" insert " (hereafter referred to as the Secretary)", and delete all of subsection (b).

(3) Add the following new sections:

"SEC. 3. (a) Whenever any Federal agency finds, or is notified, in writing, by an appropriate historical or archeological authority, that its activities in connection with any Federal construction project or federally licensed project, activity, or program may cause irreparable loss or destruction of significant scientific, prehistorical, historical, or archeological data, such agency shall notify the Secretary, in writing, and shall provide the Secretary with appropriate information concerning the project, program, or activity. Such agency may request the Secretary to undertake the recovery, protection, and preservation of such data (including preliminary survey, or other investigation as needed, and analysis and publication of the reports resulting from such investigation), or it may, with funds appropriated for such project, program, or activity, undertake such activities. Copies of reports of any investigations made pursuant to this section shall be submitted to the Secretary, who shall make them available to the public for inspection and review.

"(b) Whenever any Federal agency provides financial assistance by loan, grant, or otherwise to any private person, association, or public entity, the Secretary, if he determines that significant scientific, prehistorical, historical, or archeological data might be irrevocably lost or destroyed, may with funds appropriated expressly for this purpose conduct, with the consent of all persons, associations, or public entities having a legal interest, in the property involved, a survey of the affected site and undertake the recovery, protection, and preservation of such data (including analysis and publication). The Secretary shall, unless otherwise mutually agreed to in writing, compensate any person, association, or public entity damaged as a result of delays in construction or as a result of the temporary loss of the use of private or any nonfederally owned lands.

"Sec. 4. (a) The Secretary, upon notification, in writing, by any Federal or State agency or appropriate historical or archeological authority that scientific, prehistorical, historical, or archeological data is being or may be irrevocably lost or destroyed by any Federal or federally assisted or licensed project, activity, or program, shall, if he determines that such data is significant and is being or may be irrevocably lost or destroyed and after reasonable notice to the agency responsible for funding or licensing such project, activity, or program, conduct or cause to be conducted a survey and other investigation of the areas which are or may be affected and recover and preserve such data (including analysis and publication) which, in his opinion, are not being, but should be, recovered and preserved in the public interest'.

8100 - THE FOUNDATIONS FOR MANAGING CULTURAL RESOURCES – (Public)

**Archeological and Historic Preservation Act**

" (b) No survey or recovery work shall be required pursuant to this section which in the determination of the head of the responsible agency would impede Federal or federally assisted or licensed projects or activities undertaken in connection with any emergency, including projects or activities undertaken in anticipation of, or as a result of, a natural disaster.

“(c) The Secretary shall initiate the survey or recovery effort within sixty days after notification to him pursuant to Subsection (a) of this section or within such time as may be agreed upon with the head of the agency responsible for funding or licensing the project, activity, or program in all other cases.

"(d) The Secretary shall, unless otherwise mutually agreed to in writing, compensate any person, association, or public entity damaged as a result of the temporary loss of the use of private or nonfederally owned land."

(4) In Section 2. change "SEC. 2. (c)" to "SEC. 5. (a)" and change "instigating agency" to "agency responsible for funding or licensing the project" and delete "agency." and insert "agency and the survey and recovery programs shall terminate at a time mutually agreed upon by the Secretary and the head of such agency unless extended by mutual agreement."

(5) Delete subsection 2(d).

(6) In section 2, change "SEC. 2. (e) " to "SEC. 5. (b)".

(7) In section 5, add the following new subsection:

" (c) The Secretary shall coordinate all Federal survey and recovery activities authorized under this Act and shall submit an annual report at the end of each fiscal year to the Interior and Insular Affairs committees of the United States Congress indicating the scope and effectiveness of the program, the specific projects surveyed and the results produced, and the costs incurred by the Federal Government as a result thereof." .

(8) Redesignate "Sec. 3." as "Sec. 6." and change paragraphs (2) and (3) to read as follows:

"(2) obtain the services of experts and consultants or organizations thereof in accordance with section 3109 of title 5, United States Code; and

"(3) accept and utilize funds made available for salvage archeological purposes by any private person or corporation or transferred to him by any Federal agency."

(9) Delete all of section 4 and insert the following:

"SEC. 7. (a) To carry out the purposes of this Act, any Federal agency responsible for a construction project may assist the Secretary and/or it may transfer to him such funds as maybe agreed upon, but not more than 1 per centum of the total amount authorized to be appropriated for such project, except that the 1 per centum limitation of this section shall not apply in the event that the project involves 50,000 or less: *Provided*, That the costs of such survey, recovery, analysis, and publication shall be considered nonreimbursable project costs.

"(b) For the purposes of subsection 3 (b), there are authorized to be appropriated such sums as may be necessary, but not more than \$500,000 in fiscal year 1974; \$1,000,000 in fiscal year 1975; \$1,500,000 in fiscal year 1976; \$1,500,000 in fiscal year 1977; and \$1,500,000 in fiscal year 1978.

"(c) For the purposes of subsection 4(a), there are authorized to be appropriated not more than \$2,000,000 in fiscal year 1974; \$2,000,000 in fiscal year 1975; \$3,000,000 in fiscal year 1976; \$3,000,000 in fiscal year 1977; and \$3,000,000 in fiscal year 1978."

Approved May 24, 1974.

8100 - THE FOUNDATIONS FOR MANAGING CULTURAL RESOURCES – (Public)

**National Historic Preservation Act**

**THE NATIONAL HISTORIC PRESERVATION ACT<sup>1</sup>  
As Amended through 1992**

**AN ACT** to Establish a Program for the Preservation of Additional Historic Properties throughout the Nation, and for Other Purposes, Approved October 15, 1966 (Public Law 89-665; 80 Stat. 915; 16 U.S.C. 470) as amended by (Public Law 91-243, Public Law 93-54, Public Law 94-422, Public Law 94-458, Public Law 96-199, Public Law 96-244, Public Law 96-515, Public Law 98-483, Public Law 99-514, Public Law 100-127, and Public Law 102-575).

**Section 1** (16 U.S.C. 470)

*Short title*

(a) This Act may be cited as the "National Historic Preservation Act."

*Purpose of the Act*

(b) The Congress finds and declares that—

(1) the spirit and direction of the Nation are founded upon and reflected in its historic heritage;

(2) the historical and cultural foundations of the Nation should be preserved as a living part of our community life and development in order to give a sense of orientation to the American people;

(3) historic properties significant to the Nation's heritage are being lost or substantially altered, often inadvertently, with increasing frequency;

(4) the preservation of this irreplaceable heritage is in the public interest so that its vital legacy of cultural, educational, esthetic, inspirational, economic, and energy benefits will be maintained and enriched for future generations of Americans;

(5) in the face of ever-increasing extensions of urban centers, highways, and residential, commercial, and industrial developments, the present governmental and nongovernmental historic preservation programs and activities are inadequate to ensure future generations a genuine opportunity to appreciate and enjoy the rich heritage of our Nation;

(6) the increased knowledge of our historic resources, the establishment of better means of identifying and administering them, and the encouragement of their preservation will improve the planning and execution of Federal and federally assisted projects and will assist economic growth and development; and

(7) although the major burdens of historic preservation have been borne and major efforts initiated by private agencies and individuals, and both should continue to play a vital role, it is nevertheless necessary and appropriate for the Federal Government to accelerate its historic preservation programs and activities, to give maximum encouragement to agencies and individuals undertaking preservation by private means, and to assist State and local governments and the National Trust for Historic Preservation in the United States to expand and accelerate their historic preservation programs and activities.

## **National Historic Preservation Act**

### **Section 2** (16 U.S.C. 470-1)

#### ***Declaration of policy of Federal Government***

It shall be the policy of the Federal Government, in cooperation with other nations and in partnership with the States, local governments, Indian tribes, and private organization and individuals to--

(1) use measures, including financial and technical assistance, to foster conditions under which our modern society and our prehistoric and historic resources can exist in productive harmony and fulfill the social, economic, and other requirements of present and future generations;

(2) provide leadership in the preservation of the prehistoric and historic resources of the United States and of the international community of nations and in the administration of the national preservation program in partnership with States, Indian tribes, Native Hawaiians, and local governments;

(3) administer federally owned, administered, or controlled prehistoric and historic resources in a spirit of stewardship for the inspiration and benefit of present and future generations;

(4) contribute to the preservation of nonfederally owned prehistoric and historic resources and give maximum encouragement to organization and individuals undertaking preservation by private means;

(5) encourage the public and private preservation and utilization of all usable elements of the Nation's historic build environment; and

(6) assist State and local governments, Indian tribes and Native Hawaiian organizations and the National Trust for Historic Preservation in the United States to expand and accelerate their historic preservation programs and activities.

### **TITLE I**

#### **Section 101** (16 U.S.C. 470a)

##### ***National Register of Historic Places, expansion and maintenance***

(a)(1)(A) The Secretary of the Interior is authorized to expand and maintain a National Register of Historic Places composed of districts, sites, buildings, structures, and objects significant in American history, architecture, archeology, engineering, and culture.

##### ***National Historic Landmarks, designation***

(B) Properties meeting the criteria for National Historic Landmarks established pursuant to paragraph (2) shall be designated as "National Historic Landmarks" and included on the National Register, subject to the requirements of paragraph (6). All historic properties included on the National Register on the date of enactment of the National Historic Preservation Act Amendments of 1980 shall be deemed to be included on the National Register as of their initial listing for purposes of this Act. All historic properties listed in the Federal Register of February 6, 1979, as "National Historic Landmarks" or thereafter prior to the effective date of this Act are declared by Congress to be National Historic Landmarks of national historic significance as of their initial listing as such in the Federal Register for purposes of this Act and the Act of August 21, 1935 (49 Stat. 666); except that in cases of National Historic Landmark districts for which no boundaries have been established, boundaries must first be published in the Federal Register and submitted to the Committee on Energy and Natural Resources of the United States Senate and to the Committee on Interior and Insular Affairs of the United States House of Representatives.

### **National Historic Preservation Act**

(2) The Secretary in consultation with national historical and archeological associations, shall establish or revise criteria for properties to be included on the National Register and criteria for National Historic Landmarks, and shall also promulgate or revise regulations as may be necessary for—

(A) nominating properties for inclusion in, and removal from, the National Register and the recommendation of properties by certified local governments;

(B) designating properties as National Historic Landmarks and removing such designation;

(C) considering appeals from such recommendations, nomination, removals, and designations (or any failure or refusal by a nominating authority to nominate or designate);

(D) nominating historic properties for inclusion in the World Heritage List in accordance with the terms of the Convention concerning the Protection of the World Cultural and Natural Heritage;

(E) making determinations of eligibility of properties for inclusion on the National Register; and

(F) notifying the owner of a property, and any appropriate local governments, and the general public when the property is being considered for inclusion on the National Register, for designation as a National Historic Landmark or for nomination to the World Heritage List.

(3) Subject to the requirements of paragraph (6), any State which is carrying out a program approved under subsection (b), shall nominate to the Secretary properties which meet the criteria promulgated under subsection (a) for inclusion on the National Register. Subject to paragraph (6), any property nominated under this paragraph or under section 110(a)(2) shall be included on the National Register on the date forty-five days after receipt by the Secretary of the nomination and the necessary documentation, unless the Secretary disapproves such nomination within such forty-five day period or unless an appeal is filed under paragraph (5).

(4) Subject to the requirements of paragraph (6) the Secretary may accept a nomination directly from any person or local government for inclusion of a property on the National Register only if such property is located in a State where there is no program approved under subsection (b). The Secretary may include on the National Register any property for which such a nomination is made if he determines that such property is eligible in accordance with the regulations promulgated under paragraph (2). Such determinations shall be made within ninety days from the date of nomination unless the nomination is appealed under paragraph (5).

(5) Any person or local government may appeal to the Secretary a nomination of any historic property for inclusion on the National Register and may appeal to the Secretary the failure or refusal of a nominating authority to nominate a property in accordance with this subsection.

(6) The Secretary shall promulgate regulations requiring that before any property or district may be included on the National register or designated as a National Historic Landmark, the owner or owners of such property, or a majority of the owners of the properties within the district in the case of a historic district, shall be given the opportunity (including a reasonable period of time) to concur in, or object to, the nomination of the property or district for such inclusion or designation. If the owner or owners of any privately owned property, or a majority of the owners of such properties within the district in the case of a historic district, object to such inclusion or designation, such property shall not be included on the National Register or designated as a National Historic Landmark until such objection is withdrawn. The Secretary shall review the nomination of the property or district

### **National Historic Preservation Act**

where any such objection has been made and shall determine whether or not the property or district is eligible for such inclusion or designation, and if the Secretary determines that such property or district is eligible for such inclusion or designation, he shall inform the Advisory Council on Historic Preservation, the appropriate State Historic Preservation Officer, the appropriate chief elected local official and the owner or owners of such property, of his determination. The regulations under this paragraph shall include provisions to carry out the purposes of this paragraph in the case of multiple ownership of a single property.

#### ***Regulations for curation, documentation, and local government certification***

(7) The Secretary shall promulgate, or revise, regulations--

(A) ensuring that significant prehistoric and historic artifacts, and associated records, subject to section 110 of this Act, the Act of June 27, 1960 (16 U.S.C. 469c), and the Archeological Resources Protection Act of 1979 (16 U.S.C. 470aa and following) are deposited in an institution with adequate long-term curatorial capabilities;

(B) establishing a uniform process and standards for documenting historic properties by public agencies and private parties for purposes of incorporation into, or complementing, the national historic architectural and engineering records within the Library of Congress; and

(C) certifying local governments, in accordance with subsection (c)(1) and for the allocation of funds pursuant to section 103(c) of this Act.

(8) The Secretary shall, at least once every 4 years, in consultation with the Council and with State Historic Preservation Officers, review significant threats to properties included in, or eligible for inclusion on, the National Register, in order to--

(A) determine the kinds of properties that may be threatened;

(B) ascertain the causes of the threats; and

(C) develop and submit to the President and Congress recommendations for appropriate action.

#### ***State Historic Preservation Programs***

(b)(1) The Secretary, in consultation with the National Conference of State Historic Preservation Officers and the National Trust for Historic Preservation, shall promulgate or revise regulations for State Historic Preservation Programs. Such regulations shall provide that a State program submitted to the Secretary under this section shall be approved by the Secretary if he determines that the program--

(A) provides for the designation and appointment by the Governor of a "State Historic Preservation Officer" to administer such program in accordance with paragraph (3) and for the employment or appointment by such officer of such professionally qualified staff as may be necessary for such purposes;

(B) provides for an adequate and qualified State historic preservation review board designated by the State Historic Preservation Officer unless otherwise provided for by State law; and

(C) provides for adequate public participation in the State Historic Preservation Program, including the process of recommending properties for nomination to the National Register.

(2)(A) Periodically, but not less than every 4 years after the approval of any State program under this subsection, the Secretary, in consultation with the Council on the appropriate provisions of this Act, and in cooperation with the State Historic Preservation

### **National Historic Preservation Act**

Officer, shall evaluate the program to determine whether it is consistent with this Act.

**(B)** If, at any time, the Secretary determines that a major aspect of a State program is not consistent with this Act, the Secretary shall disapprove the program and suspend in whole or in part any contracts or cooperative agreements with the State and the State Historic Preservation Officer under this Act, until the program is consistent with this Act, unless the Secretary determines that the program will be made consistent with this Act within a reasonable period of time.

**(C)** The Secretary, in consultation with State Historic Preservation Officers, shall establish oversight methods to ensure State program consistency and quality without imposing undue review burdens on State Historic Preservation Officers.

**(D)** At the discretion of the Secretary, a State system of fiscal audit and management may be substituted for comparable Federal systems so long as the State system--

- (i)** establishes and maintains substantially similar accountability standards; and
- (ii)** provides for independent professional peer review.

The Secretary may also conduct periodic fiscal audits of State programs approved under this section as needed and shall ensure that such programs meet applicable accountability standards.

#### ***SHPO responsibilities***

**(3)** It shall be the responsibility of the State Historic Preservation Officer to administer the State Historic Preservation Program and to--

**(A)** in cooperation with Federal and State agencies, local governments, and private organizations and individuals, direct and conduct a comprehensive statewide survey of historic properties and maintain inventories of such properties;

**(B)** identify and nominate eligible properties to the National Register and otherwise administer applications for listing historic properties on the National Register;

**(C)** prepare and implement a comprehensive statewide historic preservation plan;

**(D)** administer the State program of Federal assistance for historic preservation within the State;

**(E)** advise and assist, as appropriate, Federal and State agencies and local governments in carrying out their historic preservation responsibilities;

**(F)** cooperate with the Secretary, the Advisory Council on Historic Preservation, and other Federal and State agencies, local governments, and organizations and individuals to ensure that historic properties are taken into consideration at all levels of planning and development;

**(G)** provide public information, education and training, and technical assistance in historic preservation;

**(H)** cooperate with local governments in the development of local historic preservation programs and assist local governments in becoming certified pursuant to subsection (c);

**(I)** consult with the appropriate Federal agencies in accordance with this Act on--

**(i)** Federal undertakings that may affect historical properties; and

**(ii)** the content and sufficiency of any plans developed to protect, manage, or to reduce or mitigate harm to such properties; and

**(J)** advise and assist in the evaluation of proposals for rehabilitation projects that may qualify for Federal assistance.

### **National Historic Preservation Act**

(4) Any State may carry out all or any part of its responsibilities under this subsection by contract or cooperative agreement with any qualified nonprofit organization or educational institution.

(5) Any State historic preservation program in effect under prior authority of law may be treated as an approved program for purposes of this subsection until the earlier of--

(A) the date on which the Secretary approves a program submitted by the State under this subsection, or

(B) three years after the date of the enactment of the National Historic Preservation Act Amendments of 1992.

(6)(A) Subject to subparagraphs (c) and (d), the Secretary may enter into contracts or cooperative agreements with a State Historic Preservation Officer for any State authorizing such Officer to assist the Secretary in carrying out one or more of the following responsibilities within that State--

(i) Identification and preservation of historic properties.

(ii) Determination of the eligibility of properties for listing on the National Register.

(iii) Preparation of nominations for inclusion on the National Register.

(v) Evaluation of eligibility for Federal preservation incentives.

Nothing in this paragraph shall be construed to provide that any State Historic Preservation Officer or any other person other than the Secretary shall have the authority to maintain the National Register for properties in any State.

(B) The Secretary may enter into a contract or cooperative agreement under subparagraph (a) only if--

(i) the State Historic Preservation Officer has requested the additional responsibility;

(ii) the Secretary has approved the State historic preservation program pursuant to section 101(b)(1) and (2);

(iii) the State Historic Preservation Officer agrees to carry out the additional responsibility in a timely and efficient manner acceptable to the Secretary and the Secretary determines that such Officer is fully capable of carrying out such responsibility in such manner;

(iv) the State Historic Preservation Officer agrees to permit the Secretary to review and revise, as appropriate in the discretion of the Secretary, decisions made by the Officer pursuant to such contract or cooperative agreement; and

(v) the Secretary and the State Historic Preservation Officer agree on the terms of additional financial assistance to the State, if there is to be any, for the costs of carrying out such responsibility.

(C) For each significant program area under the Secretary's authority, the Secretary shall establish specific conditions and criteria essential for the assumption by State Historic Preservation Officers of the Secretary's duties in each such program.

(D) Nothing in this subsection shall have the effect of diminishing the preservation programs and activities of the National Park Service.

#### ***Certification of local governments***

(c)(1) Any State program approved under this section shall provide a mechanism for the certification by the State Historic Preservation Officer of local governments to carry out the purposes of this Act and provide for the transfer, in accordance with section 103(c), of a portion of the grants received by the States under this Act, to such local governments. Any local government shall be certified to participate under the provisions of this section if the

**National Historic Preservation Act**

applicable State Historic Preservation Officer, and the Secretary, certifies that the local government—

(A) enforces appropriate State or local legislation for the designation and protection of historic properties;

(B) has established an adequate and qualified historic preservation review commission by State or local legislation;

(C) maintains a system for the survey and inventory of historic properties that furthers the purposes of subsection (b);

(D) provides for adequate public participation in the local historic preservation program, including the process of recommending properties for nomination to the National Register; and

(E) satisfactorily performs the responsibilities delegated to it under this Act.

Where there is no approved State program, a local government may be certified by the Secretary if he determines that such local government meets the requirements of subparagraphs (a) through (e); and in any such case the Secretary may make grants-in-aid to the local government for purposes of this section.

(2)(A) Before a property within the jurisdiction of the certified local government may be considered by the State to be nominated to the Secretary for inclusion on the National Register, the State Historic Preservation Officer shall notify the owner, the applicable chief local elected official, and the local historic preservation commission. The commission, after reasonable opportunity for public comment, shall prepare a report as to whether or not such property, in its opinion, meets the criteria of the National Register. Within sixty days of notice from the State Historic Preservation Officer, the chief local elected official shall transmit the report of the commission and his recommendation to the State Historic Preservation Officer. Except as provided in subparagraph (B), after receipt of such report and recommendation, or if no such report and recommendation are received within sixty days, the State shall make the nomination pursuant to section 101(a). The State may expedite such process with the concurrence of the certified local government.

(B) If both the commission and the chief local elected official recommend that a property not be nominated to the National Register, the State Historic Preservation Officer shall take no further action, unless within thirty days of the receipt of such recommendation by the State Historic Preservation Officer an appeal is filed with the State. If such an appeal is filed, the State shall follow the procedures for making a nomination pursuant to section 101(a). Any report and recommendations made under this section shall be included with any nomination submitted by the State to the Secretary.

(3) Any local government certified under this section or which is making efforts to become so certified shall be eligible for funds under the provisions of section 103(c) of this Act, and shall carry out any responsibilities delegated to it in accordance with such terms and conditions as the Secretary deems necessary or advisable.

(4) For the purposes of this section the term—

(A) "designation" means the identification and registration of properties for protection that meet criteria established by the State or the locality for significant historic and prehistoric resources within the jurisdiction of a local government; and

(B) "protection" means a local review process under State or local law for proposed demolition of, changes to, or other action that may affect historic properties designated pursuant to subsection (c).

## **National Historic Preservation Act**

### ***Program for assistance to Indian tribes***

**(d)(1)(A)** The Secretary shall establish a program and promulgate regulations to assist Indian tribes in preserving their particular historic properties. The Secretary shall foster communication and cooperation between Indian tribes and State Historic Preservation Officers in the administration of the national historic preservation program to ensure that all types of historic properties and all public interests in such properties are given due consideration, and to encourage coordination among Indian tribes, State Historic Preservation Officers, and Federal agencies in historic preservation planning and in the identification, evaluation, protection, and interpretation of historic properties.

**(B)** The program under subparagraph (a) shall be developed in such a manner as to ensure that tribal values are taken into account to the extent feasible. The Secretary may waive or modify requirements of this section to conform to the cultural setting of tribal heritage preservation goals and objectives. The tribal programs implemented by specific tribal organizations may vary in scope, as determined by each tribe's chief governing authority.

**(C)** The Secretary shall consult with Indian tribes, other Federal agencies, State Historic Preservation Officers, and other interested parties and initiate the program under subparagraph (a) by not later than October 1, 1994.

### ***Tribal assumption of State Historic Preservation Officer functions***

**(2)** A tribe may assume all or any part of the functions of a State Historic Preservation Officer in accordance with subsections (b)(2) and (b)(3), with respect to tribal lands, as such responsibilities may be modified for tribal programs through regulations issued by the Secretary if—

**(A)** the tribe's chief governing authority so requests;

**(B)** the tribe designates a tribal preservation official to administer the tribal historic preservation program, through appointment by the tribe's chief governing authority or as a tribal ordinance may otherwise provide;

**(C)** the tribal preservation official provides the Secretary with a plan describing how the functions the tribal preservation official proposes to assume will be carried out;

**(D)** the Secretary determines, after consultation with the tribe, the appropriate State Historic Preservation Officer, the Council (if the tribe proposes to assume the functions of the State Historic Preservation Officer with respect to review of undertakings under section 106), and other tribes, if any, whose tribal or aboriginal lands may be affected by conduct of the tribal preservation program—

**(i)** that the tribal preservation program is fully capable of carrying out the functions specified in the plan provided under subparagraph (c);

**(ii)** that the plan defines the remaining responsibilities of the Secretary and the State Historic Preservation Officer;

**(iii)** that the plan provides, with respect to properties neither owned by a member of the tribe nor held in trust by the Secretary for the benefit of the tribe, at the request of the owner thereof, the State Historic Preservation Officer, in addition to the tribal preservation official, may exercise the historic preservation responsibilities in accordance with subsections (b)(2) and (b)(3); and

**(E)** based on satisfaction of the conditions stated in subparagraphs (a), (b), (c), and (d), the Secretary approves the plan.

### **National Historic Preservation Act**

(3) In consultation with interested Indian tribes, other Native American organizations and affected State Historic Preservation Officers, the Secretary shall establish and implement procedures for carrying out section 103(a) with respect to tribal programs that assume responsibilities under paragraph (2).

(4) At the request of a tribe whose preservation program has been approved to assume functions and responsibilities pursuant to paragraph (2), the Secretary shall enter into contracts or cooperative agreements with such tribe permitting the assumption by the tribe of any part of the responsibilities referred to in subsection (b)(6) on tribal land, if--

(A) the Secretary and the tribe agree on additional financial assistance, if any, to the tribe for the costs of carrying out such authorities;

(B) the Secretary finds that the tribal historic preservation program has been demonstrated to be sufficient to carry out the contract or cooperative agreement and this Act; and

(C) the contract or cooperative agreement specifies the continuing responsibilities of the Secretary or of the appropriate State Historic Preservation Officers and provides for appropriate participation by--

(i) the tribe's traditional cultural authorities;

(ii) representatives of other tribes whose traditional lands are under the jurisdiction of the tribe assuming responsibilities; and

(iii) the interested public.

#### ***Review of undertakings under tribal preservation regulations instead of section 106***

(5) The Council may enter into an agreement with an Indian tribe to permit undertakings on tribal land to be reviewed under tribal historic preservation regulations in place of review under regulations promulgated by the Council to govern compliance with section 106, if the Council, after consultation with the tribe and appropriate State Historic Preservation Officers, determines that the tribal preservation regulations will afford historic properties consideration equivalent to those afforded by the Council's regulations.

#### ***Traditional religious and cultural properties potentially eligible***

(6)(A) Properties of traditional religious and cultural importance to an Indian tribe or Native Hawaiian organization may be determined to be eligible for inclusion on the National Register.

#### ***Section 106 review and religious and cultural properties***

(B) In carrying out its responsibilities under section 106, a Federal agency shall consult with any Indian tribe or Native Hawaiian organization that attaches religious and cultural significance to properties described in subparagraph (A).

(C) In carrying out his or her responsibilities under subsection (b)(3), the State Historic Preservation Officer for the State of Hawaii shall--

(i) consult with Native Hawaiian organizations in assessing the cultural significance of any property in determining whether to nominate such property to the National Register;

(ii) consult with Native Hawaiian organizations in developing the cultural component of a preservation program or plan for such property; and

(iii) enter into a memorandum of understanding or agreement with Native Hawaiian organizations for the assessment of the cultural significance of a property in determining whether to nominate such property to the National Register and to carry out the cultural component of such preservation program or plan.

**National Historic Preservation Act***Grants to States*

**(e)(1)** The Secretary shall administer a program of matching grants to the States for the purposes of carrying out this Act.

**(2)** The Secretary shall administer a program of matching grants-in-aid to the National Trust for Historic Preservation in the United States, chartered by Act of Congress approved October 26, 1949 (63 Stat. 947), for the purposes of carrying out the responsibilities of the National Trust.

**(3)(A)** In addition to the programs under paragraphs (1) and (2), the Secretary shall administer a program of direct grants for the preservation of properties included on the National Register. Funds to support such program annually shall not exceed 10 per centum of the amount appropriated annually for the fund established under section 108. These grants may be made by the Secretary, in consultation with the appropriate State Historic Preservation Officer--

**(i)** for the preservation of National Historic Landmarks which are threatened with demolition or impairment and for the preservation of historic properties of World Heritage significance;

**(ii)** for demonstration projects which will provide information concerning professional methods and techniques having application to historic properties;

**(iii)** for the training and development of skilled labor in trades and crafts, and in analysis and curation, relating to historic preservation; and,

**(iv)** to assist persons or small businesses within any historic district included in the National Register to remain within the district.

**(B)** The Secretary may also, in consultation with the appropriate State Historic Preservation Officer, make grants or loans or both under this section to Indian tribes and to nonprofit organizations representing ethnic or minority groups for the preservation of their cultural heritage.

**(C)** Grants may be made under subparagraph (a)(i) and (iv) only to the extent that the project cannot be carried out in as effective a manner through the use of an insured loan under section 104.

**(4)** Grants may be made under this subsection for the preservation, stabilization, restoration, or rehabilitation of religious properties listed in the National Register of Historic Places, provided that the purpose of the grant is secular, does not promote religion, and seeks to protect those qualities that are historically significant. Nothing in this paragraph shall be construed to authorize the use of any funds made available under this section for the acquisition of any property referred to in the preceding sentence.

**(5)** The Secretary shall administer a program of direct grants to Indian tribes and Native Hawaiian organizations for the purpose of carrying out this Act as it pertains to Indian tribes and Native Hawaiian organizations. Matching fund requirements may be modified. Federal funds available to a tribe or Native Hawaiian organization may be used as matching funds for the purposes of the tribe's or organization's conducting its responsibilities pursuant to this section.

**(6)(A)** As a part of the program of matching grant assistance from the Historic Preservation Fund to States, the Secretary shall administer a program of direct grants to the Federated States of Micronesia, the Republic of the Marshall Islands, the Trust Territory of the Pacific Islands, and upon termination of the Trusteeship Agreement for the Trust Territory of the Pacific Islands, the Republic of Palau (referred to as the Micronesian States) in furtherance of the Compact of Free Association between the United States and the

### National Historic Preservation Act

Federated States of Micronesia and the Marshall Islands, approved by the Compact of Free Association Act of 1985 (48 U.S.C. 1681 note), the Trusteeship Agreement for the Trust Territory of the Pacific Islands, and the Compact of Free Association between the United States and Palau, approved by the Joint Resolution entitled 'Joint Resolution to approve the "Compact of Free Association" between the United States and Government of Palau, and for other purposes' (48 U.S.C. 1681 note). The goal of the program shall be to establish historic and cultural preservation programs that meet the unique needs of each Micronesian State so that at the termination of the compacts the programs shall be firmly established. The Secretary may waive or modify the requirements of this section to conform to the cultural setting of those nations.

**(B)** The amounts to be made available to the Micronesian States shall be allocated by the Secretary on the basis of needs as determined by the Secretary. Matching funds may be waived or modified.

**(f)** No part of any grant made under this section may be used to compensate any person intervening in any proceeding under this Act. **(g)** In consultation with the Advisory Council on Historic Preservation, the Secretary shall promulgate guidelines for Federal agency responsibilities under section 110 of this title.

**(h)** Within one year after the date of enactment of the National Historic Preservation Act Amendments of 1980, the Secretary shall establish, in consultation with the Secretaries of Agriculture and Defense, the Smithsonian Institution, and the Administrator of the General Services Administration, professional standards for the preservation of historic properties in Federal ownership or control.

**(i)** The Secretary shall develop and make available to Federal agencies, State and local governments, private organizations and individuals, and other nations and international organizations pursuant to the World Heritage Convention, training in, and information concerning professional methods and techniques for the preservation of historic properties and for the administration of the historic preservation program at the Federal, State, and local level. The Secretary shall also develop mechanisms to provide information concerning historic preservation to the general public including students.

**(j)(1)** The Secretary shall, in consultation with the Council and other appropriate Federal, tribal, Native Hawaiian, and non-Federal organizations, develop and implement a comprehensive preservation education and training program.

**(2)** The education and training program described in paragraph (1) shall include--

**(A)** new standards and increased preservation training opportunities for Federal workers involved in preservation-related functions;

**(B)** increased preservation training opportunities for other Federal, State, tribal and local government workers, and students;

**(C)** technical or financial assistance, or both, to historically black colleges and universities, to tribal colleges, and to colleges with a high enrollment of Native Americans or Native Hawaiians, to establish preservation training and degree programs;

**(D)** coordination of the following activities, where appropriate, with the National Center for Preservation Technology and Training--

**(i)** distribution of information on preservation technologies;

**(ii)** provision of training and skill development in trades, crafts, and disciplines related to historic preservation in Federal training and development programs; and

**(iii)** support for research, analysis, conservation, curation, interpretation, and display related to preservation.

**National Historic Preservation Act****Section 102** (16 U.S.C. 470b)

(a) No grant may be made under this Act—

(1) unless application therefore is submitted to the Secretary in accordance with regulations and procedures prescribed by him;

(2) unless the application is in accordance with the comprehensive statewide historic preservation plan which has been approved by the Secretary after considering its relationship to the comprehensive statewide outdoor recreation plan prepared pursuant to the Land and Water Conservation Fund Act of 1965 (78 Stat. 897);

(3) for more than 60 percent of the aggregate costs of carrying out projects and programs under the administrative control of the State Historic Preservation Officer as specified in section 101(b)(3) in any one fiscal year;

(4) unless the grantee has agreed to make such reports, in such form and containing such information as the Secretary may from time to time require;

(5) unless the grantee has agreed to assume, after completion of the project, the total cost of the continued maintenance, repair, and administration of the property in a manner satisfactory to the Secretary; and

(6) until the grantee has complied with such further terms and conditions as the Secretary may deem necessary or advisable.

Except as permitted by other law, the State share of the costs referred to in paragraph (3) shall be contributed by non-Federal sources. Notwithstanding any other provision of law, no grant made pursuant to this Act shall be treated as taxable income for purposes of the Internal Revenue Code 1954.

(b) The Secretary may in his discretion waive the requirements of subsection (a), paragraphs (2) and (5) of this section for any grant under this Act to the National Trust for Historic Preservation in the United States.

(c) No State shall be permitted to utilize the value of real property obtained before the date of approval of this Act in meeting the remaining cost of a project for which a grant is made under this Act.

(d) The Secretary shall make funding available to individual States and the National Trust for Historic Preservation as soon as practicable after execution of a grant agreement. For purposes of administration, grants to individual States and the National Trust each shall be considered to be one grant and shall be administered by the National Park Service as such.

(e) The total administrative costs, direct and indirect, charged for carrying out State projects and programs may not exceed 25 percent of the aggregate costs except in the case of grants under section 101(e)(6).

**Section 103** (16 U.S.C. 470c)

(a) The amounts appropriated and made available for grants to the States for the purposes of this Act shall be apportioned among the States by the Secretary on the basis of needs as determined by him.

(b) The amounts appropriated and made available for grants to the States for projects and programs under this Act for each fiscal year shall be apportioned among the States as the Secretary determines to be appropriate. The Secretary shall notify each State of its apportionment under this subsection within thirty days following the date of enactment of legislation appropriating funds under this Act. Any amount of any apportionment that has not been paid or obligated by the Secretary during the fiscal year in which such notification is given and for two fiscal years thereafter, shall be reapportioned by the Secretary in accordance with this subsection. The Secretary shall analyze and revise as necessary the

**National Historic Preservation Act**

method of apportionment. Such method and any revision thereof shall be published by the Secretary in the Federal Register.

(c) A minimum of 10 per centum of the annual apportionment distributed by the Secretary to each State for the purposes of carrying out this Act shall be transferred by the State, pursuant to the requirements of this Act, to local governments which are certified under section 101(c) for historic preservation projects or programs of such local governments. In any year in which the total annual apportionment to the States exceeds \$65,000,000, one half of the excess shall also be transferred by the States to local governments certified pursuant to section 101(c).

(d) The Secretary shall establish guidelines for the use and distribution of funds under subsection (c) to ensure that no local government receives a disproportionate share of the funds available, and may include a maximum or minimum limitation on the amount of funds distributed to any single local government. The guidelines shall not limit the ability of any State to distribute more than 10 per centum of its annual apportionment under subsection (c), nor shall the Secretary require any State to exceed the 10 per centum minimum distribution to local governments.

**Section 104** (16 U.S.C. 470d)

(a) The Secretary shall establish and maintain a program by which he may, upon application of a private lender, insure loans (including loans made in accordance with a mortgage) made by such lender to finance any project for the preservation of a property included on the National Register.

(b) A loan may be insured under this section only if—

(1) the loan is made by a private lender approved by the Secretary as financially sound and able to service the loan properly;

(2) the amount of the loan, and interest rate charged with respect to the loan, do not exceed such amount, and such a rate, as is established by the Secretary, by rule;

(3) the Secretary has consulted the appropriate State Historic Preservation Officer concerning the preservation of the historic property;

(4) the Secretary has determined that the loan is adequately secured and there is reasonable assurance of repayment;

(5) the repayment period of the loan does not exceed the lesser of forty years or the expected life of the asset financed;

(6) the amount insured with respect to such loan does not exceed 90 per centum of the loss sustained by the lender with respect to the loan; and

(7) the loan, the borrower, and the historic property to be preserved meet other terms and conditions as may be prescribed by the Secretary, by rule, especially terms and conditions relating to the nature and quality of the preservation work. The Secretary shall consult with the Secretary of the Treasury regarding the interest rate of loans insured under this section.

(c) The aggregate unpaid principal balance of loans insured under this section and outstanding at any one time may not exceed the amount which has been covered into the Historic Preservation Fund pursuant to section 108 and subsection (g) and (i) of this section, as in effect on the date of the enactment of the Act but which has not been appropriated for any purpose. (d) Any contract of insurance executed by the Secretary under this section may be assignable, shall be an obligation supported by the full faith and credit of the United States, and shall be incontestable except for fraud or misrepresentation of which the holder had actual knowledge at the time it became a holder.

**National Historic Preservation Act**

(e) The Secretary shall specify, by rule and in each contract entered into under this section, the conditions and method of payment to a private lender as a result of losses incurred by the lender on any loan insured under this section.

(f) In entering into any contract to insure a loan under this section, the Secretary shall take steps to assure adequate protection of the financial interests of the Federal Government. The Secretary may—

(1) in connection with any foreclosure proceeding, obtain, on behalf of the Federal Government, the property securing a loan insured under this title; and

(2) operate or lease such property for such period as may be necessary to protect the interest of the Federal Government and to carry out subsection (g).

(g)(1) In any case in which a historic property is obtained pursuant to subsection (f), the Secretary shall attempt to convey such property to any governmental or nongovernmental entity under such conditions as will ensure the property's continued preservation and use; except that if, after a reasonable time, the Secretary, in consultation with the Advisory Council on Historic Preservation, determines that there is no feasible and prudent means to convey such property and to ensure its continued preservation and use, then the Secretary may convey the property at the fair market value of its interest in such property to any entity without restriction.

(2) Any funds obtained by the Secretary in connection with the conveyance of any property pursuant to paragraph (1) shall be covered into the historic preservation fund, in addition to the amounts covered into such fund pursuant to section 108 and subsection (i) of this section, and shall remain available in such fund until appropriated by the Congress to carry out the purposes of this Act.

(h) The Secretary may assess appropriate and reasonable fees in connection with insuring loans under this section. Any such fees shall be covered into the Historic Preservation Fund, in addition to the amounts covered into such fund pursuant to section 108 and subsection (g) of this section, and shall remain available in such fund until appropriated by the Congress to carry out the purposes of this Act.

(i) Notwithstanding any other provision of law, any loan insured under this section shall be treated as non-Federal funds for the purposes of satisfying any requirement of any other provision of law under which Federal funds to be used for any project or activity are conditioned upon the use of non-Federal funds by the recipient for payment of any portion of the costs of such project or activity.

(j) Effective after the fiscal year 1981 there are authorized to be appropriated, such sums as may be necessary to cover payments incurred pursuant to subsection (e).

(k) No debt obligation which is made or committed to be made, or which is insured or committed to be insured, by the Secretary under this section shall be eligible for purchase by, or commitment to purchase by, or sale or issuance to, the Federal Financing Bank.

**Section 105** (16 U.S.C. 470e)

The beneficiary of assistance under this Act shall keep such records as the Secretary shall prescribe, including records which fully disclose the disposition by the beneficiary of the proceeds of such assistance, the total cost of the project or undertaking in connection with which such assistance is given or used, and the amount and nature of that portion of the cost of the project or undertaking supplied by other sources, and such other records as will facilitate an effective audit.

**National Historic Preservation Act****Section 106** (16 U.S.C. 470f)***Advisory Council on Historic Preservation, comment on  
Federal undertakings***

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 Federal department or independent agency having 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 in 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 107** (16 U.S.C. 470g)

Nothing in this Act shall be construed to be applicable to the White House and its grounds, the Supreme Court building and its grounds, or the United States Capitol and its related buildings and grounds.

**Section 108** (16 U.S.C. 470h)

To carry out the provisions of this Act, there is hereby established the Historic Preservation Fund (hereafter referred to as the "fund") in the Treasury of the United States. There shall be covered into such fund \$24,400,000 for fiscal year 1977, \$100,000,000 for fiscal year 1978, \$100,000,000 for fiscal year 1979, \$150,000,000 for fiscal year 1980, \$150,000,000 for fiscal year 1981, and \$150,000,000 for each of fiscal years 1982 through 1997, from revenues due and payable to the United States under the Outer Continental Shelf Lands Act (67 Stat. 462, 469) as amended (43 U.S.C. 338) and/or under the Act of June 4, 1920 (41 Stat. 813) as amended (30 U.S.C. 191), notwithstanding any provision of law that such proceeds shall be credited to miscellaneous receipts of the Treasury. Such moneys shall be used only to carry out the purposes of this Act and shall be available for expenditure only when appropriated by the Congress. Any moneys not appropriated shall remain available in the fund until appropriated for said purposes: Provided, that appropriations made pursuant to this paragraph may be made without fiscal year limitation.

**Section 109** (16 U.S.C. 470h-1)

(a) In furtherance of the purposes of sections of this Act, the Secretary may accept the donation of funds which may be expended by him for projects to acquire, restore, preserve, or recover data from any district, building, structure, site, or object which is listed on the National Register of Historic Places established pursuant to section 101 of this Act, so long as the project is owned by a State, any unit of local government, or any nonprofit entity.

(b) In expending said funds, the Secretary shall give due consideration to the following factors: the national significance of the project; its historical value to the community; the imminence of its destruction or loss; and the expressed intentions of the donor. Funds expended under this subsection shall be made available without regard to the matching requirements established by section 102 of this Act, but the recipient of such funds shall be permitted to utilize them to match any grants from the Historic Preservation Fund established by section 108 of this Act.

(c) The Secretary is hereby authorized to transfer unobligated funds previously donated to the Secretary for purposes of the National Park Service, with the consent of the donor, and any funds so transferred shall be used or expended in accordance with the provisions of this Act.

## **National Historic Preservation Act**

### **Section 110** (16 U.S.C. 470h-2)

#### ***Agency responsibility to preserve historic properties within its jurisdiction***

**(a)(1)** The heads of all Federal agencies shall assume responsibility for the preservation of historic properties which are owned or controlled by such agency. Prior to acquiring, constructing, or leasing buildings for purposes of carrying out agency responsibilities, each Federal agency shall use, to the maximum extent feasible, historic properties available to the agency. Each agency shall undertake, consistent with the preservation of such properties and the mission of the agency and the professional standards established pursuant to section 101(g), any preservation, as may be necessary to carry out this section.

#### ***Agency preservation program, establishment***

**(2)** Each Federal agency shall establish (unless exempted pursuant to section 214), in consultation with the Secretary, a preservation program for the identification, evaluation, and nomination to the National Register of Historic Places, and protection of historic properties. Such program shall ensure--

**(A)** that historic properties under the jurisdiction or control of the agency, are identified, evaluated, and nominated to the National Register;

**(B)** that such properties under the jurisdiction or control of the agency as are listed in or may be eligible for the National Register are managed and maintained in a way that considers the preservation of their historic, archaeological, architectural, and cultural values in compliance with section 106 and gives special consideration to the preservation of such values in the case of properties designated as having National significance;

#### ***Agency responsibility to consider nonagency historic properties***

**(C)** that the preservation of properties not under the jurisdiction or control of the agency, but subject to be potentially affected by agency actions are given full consideration in planning;

**(D)** that the agency's preservation-related activities are carried out in consultation with other Federal, State, and local agencies, Indian tribes, Native Hawaiian organizations carrying out historic preservation planning activities, and with the private sector; and

**(E)** that the agency's procedures for compliance with section 106--

**(i)** are consistent with regulations issued by the Council pursuant to section 211;

**(ii)** provide a process for the identification and evaluation of historic properties for listing in the National Register and the development and implementation of agreements, in consultation with State Historic Preservation Officers, local governments, Indian tribes, Native Hawaiian organizations, and the interested public, as appropriate, regarding the means by which adverse effects on such properties will be considered; and

**(iii)** provide for the disposition of Native American cultural items from Federal or tribal land in a manner consistent with section 3(c) of the Native American Graves Protection and Repatriation Act (25 U.S.C. 3002(c)). **(b)** Each Federal agency shall initiate measures to assure that where, as a result of Federal action or assistance carried out by such agency, a historic property is to be substantially altered or demolished, timely steps are taken to make or have made appropriate records, and that such records then be deposited, in accordance with section 101(a), in the Library of Congress or with such other appropriate agency as may be designated by the Secretary, for future use and reference.

**National Historic Preservation Act*****Agency designation of Preservation Officer***

(c) The head of each Federal agency shall, unless exempted under section 214, designate a qualified official to be known as the agency's "preservation officer" who shall be responsible for coordinating that agency's activities under this Act. Each Preservation Officer may, in order to be considered qualified, satisfactorily complete an appropriate training program established by the Secretary under section 101(h).

(d) Consistent with the agency's mission and mandates, all Federal agencies shall carry out agency programs and projects (including those under which any Federal assistance is provided or any Federal license, permit, or other approval is required) in accordance with the purposes of this Act and, give consideration to programs and projects which will further the purposes of this Act.

(e) The Secretary shall review and approve the plans of transferees of surplus federally owned historic properties not later than ninety days after his receipt of such plans to ensure that the prehistorical, historical, architectural, or culturally significant values will be preserved or enhanced.

***Minimizing harm to National Historic Landmarks: comment opportunity***

(f) Prior to the approval of any Federal undertaking which may directly and adversely affect any National Historic Landmark, the head of the responsible Federal agency shall, to the maximum extent possible, undertake such planning and actions as may be necessary to minimize harm to such landmark, and shall afford the Advisory Council on Historic Preservation a reasonable opportunity to comment on the undertaking.

***Preservation costs borne by sponsors of undertakings***

(g) Each Federal agency may include the costs of preservation activities of such agency under this Act as eligible project costs in all undertakings of such agency or assisted by such agency. The eligible project costs may also include amounts paid by a Federal agency to any State to be used in carrying out such preservation responsibilities of the Federal agency under this Act, and reasonable costs may be charged to Federal licensees and permittees as a condition to the issuance of such license or permit.

(h) The Secretary shall establish an annual preservation awards program under which he may make monetary awards in amounts not to exceed \$1,000 and provide citations for special achievement to officers and employees of Federal, State, and certified local governments in recognition of their outstanding contributions to the preservation of historic resources. Such program may include the issuance of annual awards by the president of the United States to any citizen of the United States recommended for such award by the Secretary.

(i) Nothing in this Act shall be construed to require the preparation of an environmental impact statement where such a statement would not otherwise be required under the National Environmental Policy Act of 1969, and nothing in this Act shall be construed to provide any exemption from any requirement respecting the preparation of such a statement under such Act.

(j) The Secretary shall promulgate regulations under which the requirements of this section may be waived in whole or in part in the event of a major natural disaster or an imminent threat to the national security.

**National Historic Preservation Act**

(k) Each Federal agency shall ensure that the agency will not grant a loan, loan guarantee permit, license, or other assistance to an applicant who, with intent to avoid the requirements of section 106, has intentionally significantly adversely affected a historic property to which the grant would relate, or having legal power to prevent it, allowed such significant adverse effect to occur, unless the agency, after consultation with the Council, determines that circumstances justify granting such assistance despite the adverse effect created or permitted by the applicant.

(l) With respect to any undertaking subject to section 106 which adversely affects any property included in or eligible for inclusion in the National Register, and for which a Federal agency has not entered into an agreement with the Council, the head of such agency shall document any decision made pursuant to section 106. The head of such agency may not delegate his or her responsibilities pursuant to such section. Where a section 106 memorandum of agreement has been executed with respect to an undertaking, such memorandum shall govern the undertaking and all of its parts.

**Section 111** (16 U.S.C. 470h-3)

(a) Notwithstanding any other provision of law, any Federal agency, after consultation with the Council, shall, to the extent practicable, establish and implement alternatives for historic properties, including adaptive use, that are not needed for current or projected agency purposes, and may lease a historic property owned by the agency to any person or organization, or exchange any property owned by the agency with comparable historic property, if the agency head determines that the lease or exchange will adequately ensure the preservation of the historic property.

(b) The proceeds of any lease under subsection (a) may, notwithstanding any other provision of law, be retained by the agency entering into such lease and used to defray the costs of administration, maintenance, repair, and related expenses incurred by the agency with respect to such property or other properties which are on the National Register which are owned by, or are under the jurisdiction or control of, such agency. Any surplus proceeds from such leases shall be deposited into the Treasury of the United States at the end of the second fiscal year following the fiscal year in which such proceeds were received.

(c) The head of any Federal agency having responsibility for the management of any historic property may, after consultation with the Advisory Council on Historic Preservation, enter into contracts for the management of such property. Any such contract shall contain such terms and conditions as the head of such agency deems necessary or appropriate to protect the interests of the United States and insure adequate preservation of historic property.

**Section 112** (16 U.S.C. 470h-4)

(a) **In general.** Each Federal agency that is responsible for the protection of historic resources, including archaeological resources pursuant to this Act or any other law shall ensure each of the following—

(1)(A) All actions taken by employees or contractors of such agency shall meet professional standards under regulations developed by the Secretary in consultation with the Council, other affected agencies, and the appropriate professional societies of the disciplines involved, specifically archaeology, architecture, conservation, history, landscape architecture, and planning.

## **National Historic Preservation Act**

### *Professional standards*

**(B)** Agency personnel or contractors responsible for historic resources shall meet qualification standards established by the Office of Personnel Management in consultation with the Secretary and appropriate professional societies of the disciplines involved. The Office of Personnel Management shall revise qualification standards within 2 years after the date of enactment of this Act for the disciplines involved, specifically archaeology, architecture, conservation, curation, history, landscape architecture, and planning. Such standards shall consider the particular skills and expertise needed for the preservation of historic resources and shall be equivalent requirements for the disciplines involved.

### *Permanent records of research, surveys, and excavations*

**(2)** Records and other data, including data produced by historical research and archaeological surveys and excavations are permanently maintained in appropriate data bases and made available to potential users pursuant to such regulations as the Secretary shall promulgate.

**(b) Guidelines.** In order to promote the preservation of historic resources on properties eligible for listing in the National register, the Secretary shall, in consultation with the Council, promulgate guidelines to ensure that Federal, State, and tribal historic preservation programs subject to this Act include plans to—

**(1)** provide information to the owners of properties containing historic (including architectural, curatorial, and archaeological) resources with demonstrated or likely research significance, about the need for protection of such resources, and the available means of protection;

**(2)** encourage owners to preserve such resources intact and in place and offer the owners of such resources information on the tax and grant assistance available for the donation of the resources or of a preservation easement of the resources;

**(3)** encourage the protection of Native American cultural items (within the meaning of section 2(3) and (9) of the Native American Graves Protection and Repatriation Act (25 U.S.C. 3001 (3) and (9)) and of properties of religious or cultural importance to Indian tribes, Native Hawaiians, or other Native American groups; and

**(4)** encourage owners who are undertaking archaeological excavations to--

**(A)** conduct excavations and analyses that meet standards for federally-sponsored excavations established by the Secretary;

**(B)** donate or lend artifacts of research significance to an appropriate research institution;

**(C)** allow access to artifacts for research purposes; and

**(D)** prior to excavating or disposing of a Native American cultural item in which an Indian tribe or Native Hawaiian organization may have an interest under section 3(a)(2)(B) or (C) of the Native American Graves Protection and Repatriation Act (25 U.S.C. 3002(a)(2)(B) and (C)), given [sic] notice to and consult with such Indian tribe or Native Hawaiian organization.

### **Section 113** (16 U.S.C. 470h-5)

**(a) Study.** In order to help control illegal interstate and international traffic in antiquities, including archaeological, curatorial, and architectural objects, and historical documents of all kinds, the Secretary shall study and report on the suitability and feasibility of alternatives for controlling illegal interstate and international traffic in antiquities.

## **National Historic Preservation Act**

**(b) Consultation.** In conducting the study described in subsection (a) the Secretary shall consult with the Council and other Federal agencies that conduct, cause to be conducted, or permit archaeological surveys or excavations or that have responsibilities for other kinds of antiquities and with State Historic Preservation Officers, archaeological, architectural, historical, conservation, and curatorial organizations, Indian tribes, Native Hawaiian organizations, and other Native American organizations, international organizations and other interested persons.

**(c) Report.** Not later than 18 months after the date of enactment of this section, the Secretary shall submit to Congress a report detailing the Secretary's findings and recommendations from the study described in subsection (a).

**(d) Authorization.** There are authorized to be appropriated not more than \$500,000 for the study described in subsection (a), such sums to remain available until expended.

## **TITLE II**

### **Section 201** (16 U.S.C. 470i)

#### *Advisory Council on Historic Preservation membership*

**(a)** There is established as an independent agency of the United States Government an Advisory Council on Historic Preservation which shall be composed of the following members:

- (1)** a Chairman appointed by the President selected from the general public;
- (2)** the Secretary of the Interior;
- (3)** the Architect of the Capitol;
- (4)** the Secretary of Agriculture and the heads of four other agencies of the United States (other than the Department of the Interior), the activities of which affect historic preservation, appointed by the President;
- (5)** one Governor appointed by the President;
- (6)** one mayor appointed by the President;
- (7)** the President of the National Conference of State Historic Preservation Officers;
- (8)** the Chairman of the National Trust for Historic Preservation;
- (9)** four experts in the field of historic preservation appointed by the President from the disciplines of architecture, history, archaeology, and other appropriate disciplines;
- (10)** three at-large members from the general public, appointed by the President; and
- (11)** one member of an Indian tribe or Native Hawaiian organization who represents the interests of the tribe or organization of which he or she is a member, appointed by the President.

**(b)** Each member of the Council specified in paragraphs (2) through (8) (other than (5) and (6)) may designate another officer of his department, agency, or organization to serve on the Council in his stead, except that, in the case of paragraphs (2) and (4), no such officer other than an Assistant Secretary or an officer having major department-wide or agency-wide responsibilities may be so designated.

**(c)** Each member of the Council appointed under paragraph (1), and under paragraphs (9) and (10) of subsection (a) shall serve for a term of four years from the expiration of his predecessor's term; except that the members first appointed under that paragraph shall serve for terms of one to four years, as designated by the President at the time of appointment, in such manner as to ensure that the terms of not more than two of them will expire in any one year. The members appointed under paragraphs (5) and (6) shall serve for the term of their

### **National Historic Preservation Act**

elected office but not in excess of four years. An appointed member whose term has expired shall serve until that member's successor has been appointed.

(d) A vacancy in the Council shall not affect its powers, but shall be filled not later than sixty days after such vacancy commences, in the same manner as the original appointment (and for the balance of any unexpired terms). The members of the Advisory Council on Historic Preservation appointed by the President under this Act as in effect on the day before the enactment of the National Historic Preservation Act Amendments of 1980 shall remain in office until all members of the Council, as specified in this section, have been appointed. The members first appointed under this section shall be appointed not later than one hundred and eighty days after the enactment of the National Historic Preservation Act Amendments of 1980.

(e) The President shall designate a Vice Chairman, from the members appointed under paragraphs (5), (6), (9), or (10). The Vice Chairman may act in place of the Chairman during the absence or disability of the Chairman or when the office is vacant.

(f) Nine members of the Council shall constitute a quorum.

#### **Section 202** (16 U.S.C. 470j)

(a) The Council shall—

(1) advise the President and the Congress on matters relating to historic preservation, recommend measures to coordinate activities of Federal, State, and local agencies and private institutions and individuals relating to historic preservation; and advise on the dissemination of information pertaining to such activities;

(2) encourage, in cooperation with the National Trust for Historic Preservation and appropriate private agencies, public interest and participation in historic preservation;

(3) recommend the conduct of studies in such areas as the adequacy of legislative and administrative statutes and regulations pertaining to historic preservation activities of State and local governments and the effects of tax policies at all levels of government on historic preservation;

(4) advise as to guidelines for the assistance of State and local governments in drafting legislation relating to historic preservation;

(5) encourage, in cooperation with appropriate public and private agencies and institutions, training and education in the field of historic preservation;

(6) review the policies and programs of Federal agencies and recommend to such agencies methods to improve the effectiveness, coordination, and consistency of those policies and programs with the policies and programs carried out under this Act; and,

(7) inform and educate Federal agencies, State and local governments, Indian tribes, other nations and international organizations and private groups and individuals as to the Council's authorized activities.

(b) The Council shall submit annually a comprehensive report of its activities and the results of its studies to the President and the Congress and shall from time to time submit such additional and special reports as it deems advisable. Each report shall propose such legislative enactments and other actions as, in the judgment of the Council, are necessary and appropriate to carry out its recommendations and shall provide the Council's assessment of current and emerging problems in the field of historic preservation and an evaluation of the effectiveness of the programs of Federal agencies, State and local governments, and the private sector in carrying out the purposes of this Act.

**National Historic Preservation Act****Section 203** (16 U.S.C. 470k)

The Council is authorized to secure directly from any department, bureau, agency, board, commission, office, independent establishment or instrumentality of the executive branch of the Federal Government information, suggestions, estimates, and statistics for the purpose of this title; and each such department or instrumentality is authorized to furnish such information, suggestions, estimates, and statistics to the extent permitted by law and within available funds.

**Section 204** (16 U.S.C. 470l)

The members of the Council specified in paragraphs (2), (3), and (4) of section 201(a) shall serve without additional compensation. The other members of the Council shall receive \$100 per diem when engaged in the performances of the duties of the Council. All members of the Council shall receive reimbursement for necessary traveling and subsistence expenses incurred by them in the performance of the duties of the Council.

**Section 205** (16 U.S.C. 470m)

(a) There shall be an Executive Director of the Council who shall be appointed in the competitive service by the Chairman with the concurrence of the Council. The Executive Director shall report directly to the Council and perform such functions and duties as the Council may prescribe.

(b) The Council shall have a General Counsel, who shall be appointed by the Executive Director. The General Counsel shall report directly to the Executive Director and serve as the Council's legal advisor. The Executive Director shall appoint such other attorneys as may be necessary to assist the General Counsel, represent the Council in courts of law whenever appropriate, including enforcement of agreements with Federal agencies to which the Council is a party, assist the Department of Justice in handling litigation concerning the Council in courts of law, and perform such other legal duties and functions as the Executive Director and the Council may direct.

(c) The Executive Director of the Council may appoint and fix the compensation of such officers and employees in the competitive service as are necessary to perform the functions of the Council at rates not to exceed that now or hereafter prescribed for the highest rate for grade 15 of the General Schedule under section 5332 of Title 5, United States Code: Provided, however, That the Executive Director, with the concurrence of the Chairman, may appoint and fix the compensation of not to exceed five employees in the competitive service at rates not to exceed that now or hereafter prescribed for the highest rate of grade 17 of the General Schedule under section 5332 of Title 5, United States Code.

(d) The Executive Director shall have power to appoint and fix the compensation of such additional personnel as may be necessary to carry out its duties, without regard to the provisions of the civil service laws and the Classification Act of 1949.

(e) The Executive Director of the Council is authorized to procure expert and consultant services in accordance with the provisions of section 3109 of Title 5, United States Code.

(f) Financial and administrative services (including those related to budgeting, accounting, financial reporting, personnel and procurement) shall be provided the Council by the Department of the Interior, for which payments shall be made in advance, or by reimbursement, from funds of the Council in such amounts as may be agreed upon the Chairman of the Council and the Secretary of the Interior; Provided, That the regulations of the Department of the Interior for the collection of indebtedness of personnel resulting from

### **National Historic Preservation Act**

erroneous payments (5 U.S.C. 46(e)) shall apply to the collection of erroneous payments made to or on behalf of a Council employee, and regulations of said Secretary for the administrative control of funds (31 U.S.C. 665(g)) shall apply to appropriations of the Council: And provided further, That the Council shall not be required to prescribe such regulations.

(g) The members of the Council specified in paragraphs (2) through (4) of Section 201(a) shall provide the Council, with or without reimbursement as may be agreed upon by the Chairman and the members, with such funds, personnel, facilities, and services under their jurisdiction and control as may be needed by the Council to carry out its duties, to the extent that such funds, personnel, facilities, and services are requested by the Council and are otherwise available for that purpose. To the extent of available appropriations, the Council may obtain, by purchase, rental, donation, or otherwise, such additional property, facilities, and services as may be needed to carry out its duties and may also receive donations of moneys for such purpose, and the Executive Director is authorized, in his discretion, to accept, hold, use, expend, and administer the same for the purposes of this Act.

#### **Section 206** (16 U.S.C. 470n)

(a) The participation of the United States as a member of the International Centre for the Study of the Preservation and Restoration of Cultural Property is hereby authorized.

(b) The Council shall recommend to the Secretary of State, after consultation with the Smithsonian Institution and other public and private organizations concerned with the technical problems of preservation, the members of the official delegation which will participate in the activities of the Centre on behalf of the United States. The Secretary of State shall appoint the members of the official delegation from the persons recommended to him by the Council.

(c) For the purposes of this section there is authorized to be appropriated an amount equal to the assessment for United States membership in the Centre for fiscal years 1979, 1980, 1981, and 1982: Provided, that no appropriation is authorized and no payment shall be made to the Centre in excess of 25 per centum of the total annual assessment of such organization. Authorization for payment of such assessment shall begin in fiscal year 1981, but shall include earlier costs.

#### **Section 207** (16 U.S.C. 470o)

So much of the personnel, property, records, and unexpended balances of appropriations, allocations, and other funds employed, held, used, programmed, or available or to be made available by the Department of the Interior in connection with the functions of the Council, as the Director of the Office of Management and Budget shall determine, shall be transferred from the Department to the Council within 60 days of the effective date of this Act.

#### **Section 208** (16 U.S.C. 470p)

Any employee in the competitive service of the United States transferred to the Council under the provisions of this section shall retain all rights, benefits, and privileges pertaining thereto held prior to such transfer.

**National Historic Preservation Act****Section 209** (16 U.S.C. 470q)

The Council is exempt from the provisions of the Federal Advisory Committee Act (86 Stat. 770), and the provisions of the Administrative Procedure Act (80 Stat. 381) shall govern the operations of the Council.

**Section 210** (16 U.S.C. 470r)

No officer or agency of the United States shall have any authority to require the Council to submit its legislative recommendations, or testimony, or comments on legislation to any officer or agency of the United States for approval, comments, or review, prior to the submission of such recommendations, testimony, or comments to the Congress. In instances in which the Council voluntarily seeks to obtain the comments or review of any officer or agency of the United States, the Council shall include a description of such actions in its legislative recommendations, testimony, or comments on legislation which it transmits to the Congress.

**Section 211** (16 U.S.C. 470s)***Council regulations to govern section 106***

The Council is authorized to promulgate such rules and regulations as it deems necessary to govern the implementation of section 106 of this Act in its entirety. The Council shall, by regulation, establish such procedures as may be necessary to provide for participation by local governments in proceedings and other actions taken by the Council with respect to undertakings referred to in section 106 which affect such local governments.

**Section 212** (16 U.S.C. 470t)

(a) The Council shall submit its budget annually as a related agency of the Department of the Interior. There are authorized to be appropriated for purposes of this title not to exceed \$5,000,000 for each of the fiscal years 1993 through 1996. (b) Whenever the Council submits any budget estimate or request to the President or the Office of Management and Budget, it shall concurrently transmit copies of that estimate or request to the House and Senate Appropriations Committees and the House Committee on Interior and Insular Affairs and the Senate committee on Energy and Natural Resources.

**Section 213** (16 U.S.C. 470u)

To assist the Council in discharging its responsibilities under this Act, the Secretary at the request of the Chairman, shall provide a report to the Council detailing the significance of any historic property, describing the effects of any proposed undertaking on the affected property, and recommending measures to avoid, minimize, or mitigate adverse effects.

**Section 214** (16 U.S.C. 470v)

The Council, with the concurrence of the Secretary, shall promulgate regulations or guidelines, as appropriate, under which Federal programs or undertakings may be exempted from any or all of the requirements of this Act when such exemption is determined to be consistent with the purposes of this Act, taking into consideration the magnitude of the exempted undertaking or program and the likelihood of impairment of historic properties.

**TITLE III****Section 301** (16 U.S.C. 470w)

**National Historic Preservation Act*****Definitions***

As used in this Act, the term—

(1) "**Agency**" means agency as such term is defined in section 551 of Title 5, United States Code.

(2) "**State**" means any State of the United States, the District of Columbia, the commonwealth of Puerto Rico, Guam, the Virgin Islands, American Samoa, the Commonwealth of the Northern Mariana Islands, and the Trust Territory of the Pacific Islands, the Republic of the Marshall Islands, the Federated States of Micronesia, and, upon termination of the Trusteeship Agreement for the Trust Territory of the Pacific Islands, the Republic of Palau.

(3) "**Local government**" means a city, county, parish, township, municipality, or borough, or any other general purpose political subdivision of any State.

(4) "**Indian tribe**" or "**tribe**" means an Indian tribe, band, nation, or other organized group or community, including a Native village, Regional Corporation or Village Corporation, as those terms are defined in section 3 of the Alaska Native Claims Settlement Act (43 U.S.C. 1602), which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.

(5) "**Historic property**" or "**historic resource**" means any prehistoric or historic district, site, building, structure, or object included in, or eligible for inclusion on the National Register, including artifacts, records, and material remains related to such a property or resource.

(6) "**National Register**" or "**Register**" means the National Register of Historic Places established under section 101.

(7) "**Undertaking**" means a project, activity, or program funded in whole or in part under the direct or indirect jurisdiction of a Federal agency, including—

(A) those carried out by or on behalf of the agency;

(B) those carried out with Federal financial assistance;

(C) those requiring a Federal permit, license, or approval; and

(D) those subject to State or local regulation administered pursuant to a delegation or approval by a Federal agency.

(8) "**Preservation**" or "**historic preservation**" includes identification, evaluation, recordation, documentation, curation, acquisition, protection, management, rehabilitation, restoration, stabilization, maintenance, research, interpretation, conservation, and education and training regarding the foregoing activities or any combination of the foregoing activities.

(9) "**Cultural park**" means a definable area which is distinguished by historic resources and land related to such resources and which constitutes an interpretive, educational, and recreational resource for the public at large.

(10) "**Historic conservation district**" means an area which contains—

(A) historic properties,

(B) buildings having similar or related architectural characteristics,

(C) cultural cohesiveness, or

(D) any combination of the foregoing.

(11) "**Secretary**" means the Secretary of the Interior acting through the Director of the National Park Service except where otherwise specified.

(12) "**State Historic Preservation Review Board**" means a board, council, commission, or other similar collegial body established as provided in section 101(b)(1)(B)—

### **National Historic Preservation Act**

(A) the members of which are appointed by the State Historic Preservation Officer (unless otherwise provided for by State law)

(B) a majority of the members of which are professionals qualified in the following and related disciplines: history, prehistoric and historic archeology, architectural history, architecture, folklore, cultural anthropology, curation, conservation, and landscape architecture; and

(C) which has the authority to—

(i) review National Register nominations and appeals from nominations;

(ii) review appropriate documentation submitted in conjunction with the Historic Preservation Fund;

(iii) provide general advice and guidance to the State Historic Preservation Officer, and

(iv) perform such other duties as may be appropriate.

(13) "**Historic preservation review commission**" means a board, council, commission, or other similar collegial body which is established by State or local legislation as provided in section 101(c)(1)(B), and the members of which are appointed, unless otherwise provided by State or local legislation, by the chief elected official of the jurisdiction concerned from among—

(A) professionals in the disciplines of architecture, history, architectural history, planning, prehistoric and historic archaeology, folklore, cultural anthropology, curation, conservation, and landscape architecture or related disciplines, to the extent such professionals are available in the community concerned, and

(B) such other persons as have demonstrated special interest, experience, or knowledge in history, architecture, or related disciplines and as will provide for an adequate and qualified commission.

(14) "**Tribal lands**" means—

(A) all lands within the exterior boundaries of any Indian reservation; and

(B) all dependent Indian communities.

(15) "**Certified local government**" means a local government whose local historic preservation program has been certified pursuant to section 101(c).

(16) "**Council**" means the Advisory Council on Historic Preservation established by section 201.

(17) "**Native Hawaiian**" means any individual who is a descendant of the aboriginal people who, prior to 1778, occupied and exercised sovereignty in the area that now constitutes the State of Hawaii.

(18) "**Native Hawaiian organization**" means any organization which—

(A) serves and represents the interests of Native Hawaiians;

(B) has as a primary and stated purpose the provision of services to Native Hawaiians; and

(C) has demonstrated expertise in aspects of historic preservation that are culturally significant to Native Hawaiians.

The term includes, but is not limited to, the Office of Hawaiian Affairs of the State of Hawaii and Hui Malama I Na Kapuna O Hawai'i Nei, an organization incorporated under the laws of the State of Hawaii.

#### **Section 302** (16 U.S.C. 470w-1)

Where appropriate, each Federal agency is authorized to expend funds appropriated for its authorized programs for the purposes of activities carried out pursuant to this Act, except to the extent appropriations legislation expressly provides otherwise.

## National Historic Preservation Act

### Section 303 (16 U.S.C. 470w-2)

(a) The Secretary is authorized to accept donations and bequests of money and personal property for the purposes of this Act and shall hold, use, expend, and administer the same for such purposes.

(b) The Secretary is authorized to accept gifts or donations of less than fee interests in any historic property where the acceptance of such interests will facilitate the conservation or preservation of such properties. Nothing in this section or in any provision of this Act shall be construed to affect or impair any other authority of the Secretary under other provision of law to accept or acquire any property for conservation or preservation or for any other purpose.

### Section 304 (16 U.S.C. 470w-3)

#### *Freedom of Information Act exemption*

(a) **Authority to withhold from disclosure.** The head of a Federal agency or other public official receiving grant assistance pursuant to this Act, after consultation with the Secretary, shall withhold from disclosure to the public, information about the location, character, or ownership of a historic resource if the Secretary and the agency determine that disclosure may—

- (1) cause a significant invasion of privacy;
- (2) risk harm to the historic resource; or
- (3) impede the use of a traditional religious site by practitioners.

(b) **Access determination.** When the head of a Federal agency or other public official has determined that information should be withheld from the public pursuant to subsection (a), the Secretary, in consultation with such Federal agency head or official, shall determine who may have access to the information for the purpose of carrying out this Act.

(c) **Consultation with Council.** When the information in question has been developed in the course of an agency's compliance with Section 106 or 110(f), the Secretary shall consult with the Council in reaching determinations under subsections (a) and (b).

### Section 305 (16 U.S.C. 470w-4)

In any civil action brought in any United States district court by any interested person to enforce the provisions of this Act, if such person substantially prevails in such action, the court may award attorneys' fees, expert witness fees, and other costs of participating in such action, as the court deems reasonable.

### Section 306 (16 U.S.C. 470w-5)

(a) In order to provide a national center to commemorate and encourage the building arts and to preserve and maintain a nationally significant building which exemplifies the great achievements of the building arts in the United States, the Secretary and the Administrator of the General Services Administration are authorized and directed to enter into a cooperative agreement with the Committee for a National Museum of the Building Arts, Incorporated, a nonprofit corporation organized and existing under the laws of the District of Columbia, or its successor, for the operation of a National Museum for the Building Arts in the Federal Building located in the block bounded by Fourth Street, Fifth Street, F Street, and G Street, Northwest in Washington, District of Columbia. Such museum shall--

- (1) collect and disseminate information concerning the building arts, including the establishment of a national reference center for current and historic documents, publications, and research relating to the building arts;

### **National Historic Preservation Act**

(2) foster educational programs relating to the history, practice and contribution to society of the building arts, including promotion of imaginative educational approaches to enhance understanding and appreciation of all facets of the building arts;

(3) publicly display temporary and permanent exhibits illustrating, interpreting and demonstrating the building arts;

(4) sponsor or conduct research and study into the history of the building arts and their role in shaping our civilization; and

(5) encourage contributions to the building arts.

(b) The cooperative agreement referred to in subsection (a) shall include provisions which—

(1) make the site available to the Committee referred to in subsection (a) without charge;

(2) provide, subject to available appropriations, such maintenance, security, information, janitorial and other services as may be necessary to assure the preservation and operation of the site; and

(3) prescribe reasonable terms and conditions by which the Committee can fulfill its responsibilities under this Act.

(c) The Secretary is authorized and directed to provide matching grants-in-aid to the Committee referred to in subsection (a) for its programs related to historic preservation. The Committee shall match such grants-in-aid in a manner and with such funds and services as shall be satisfactory to the Secretary, except that no more than \$500,000 may be provided to the Committee in any one fiscal year.

(d) The renovation of the site shall be carried out by the Administrator with the advice of the Secretary. Such renovation shall, as far as practicable—

(1) be commenced immediately,

(2) preserve, enhance, and restore the distinctive and historically authentic architectural character of the site consistent with the needs of a national museum of the building arts and other compatible use, and

(3) retain the availability of the central court of the building, or portions thereof, for appropriate public activities.

(e) The Committee shall submit an annual report to the Secretary and the Administrator concerning its activities under this section and shall provide the Secretary and the Administrator with such other information as the Secretary may, from time to time, deem necessary or advisable.

(f) For purposes of this section, the term " building arts" includes, but shall not be limited to, all practical and scholarly aspects of prehistoric, historic, and contemporary architecture, archeology, construction, building technology and skills, landscape architecture, preservation and conservation, building and construction, engineering, urban and community design and renewal, city and regional planning, and related professions, skills, trades and crafts.

#### **Section 307** (16 U.S.C. 470w-6)

(a) At least thirty days prior to publishing in the Federal Register any proposed regulation required by this Act, the Secretary shall transmit a copy of the regulation to the Committee on Interior and Insular Affairs of the House of Representatives and the Committee on Energy and Natural Resources of the Senate. The Secretary also shall transmit to such committees a copy of any final regulation prior to its publication in the Federal Register. Except as provided in subsection (b) of this section, no final regulation of the Secretary shall become effective prior to the expiration of thirty calendar days after it is published in the Federal Register during which either or both Houses of Congress are in session.

### **National Historic Preservation Act**

(b) In the case of an emergency, a final regulation of the Secretary may become effective without regard to the last sentence of subsection (a) if the Secretary notified in writing the Committee on Interior and Insular Affairs of the United States House of Representatives and the Committee on Energy and Natural Resources of the United States Senate setting forth the reasons why it is necessary to make the regulation effective prior to the expiration of the thirty-day period.

(c) Except as provided in subsection (b), the regulation shall not become effective if, within ninety calendar days of continuous session of Congress after the date of promulgation, both Houses of Congress adopt a concurrent resolution, the matter after the resolving clause of which is as follows: "That Congress disapproves the regulation promulgated by the Secretary dealing with the matter of \_\_\_\_\_, which regulation was transmitted to Congress on \_\_\_\_\_," the blank spaces therein being appropriately filled.

(d) If at the end of sixty calendar days of continuous session of Congress after the date of promulgation of a regulation, no committee of either House of Congress has reported or been discharged from further consideration of a concurrent resolution disapproving the regulation, and neither House has adopted such a resolution, the regulation may go into effect immediately. If, within such sixty calendar days, such a committee has reported or been discharged from further consideration of such a resolution, the regulation may go into effect not sooner than ninety calendar days of continuous session of Congress after its promulgation unless disapproved as provided for.

(e) For the purposes of this section—

(1) continuity of session is broken only by an adjournment sine die; and

(2) the days on which either House is not in session because of an adjournment of more than three days to a day certain are excluded in the computation of sixty and ninety calendar days of continuous session of Congress.

(f) Congressional inaction on or rejection of a resolution of disapproval shall not be deemed an expression of approval of such regulation.

## **TITLE IV**

### **Section 401**

The Congress finds and declares that, given the complexity of technical problems encountered in preserving historic properties and the lack of adequate distribution of technical information to preserve such properties, a national initiative to coordinate and promote research, distribute information, and provide training about preservation skills and technologies would be beneficial.

### **Section 402**

For the purposes of this title—

(1) The term "Board" means the National Preservation Technology and Training Board established pursuant to section 404.

(2) The term "Center" means the National Center for Preservation Technology and Training established pursuant to section 403.

(3) The term "Secretary" means the Secretary of the Interior.

### **Section 403**

(a) **Establishment.** There is hereby established within the Department of the Interior a National Center for Preservation Technology and Training. The Center shall be located at Northwestern State University of Louisiana in Natchitoches, Louisiana.

### **National Historic Preservation Act**

**(b) Purposes.** The purposes of the Center shall be to–

(1) develop and distribute preservation and conservation skills and technologies for the identification, evaluation, conservation, and interpretation of prehistoric and historic resources;

(2) develop and facilitate training for Federal, State and local resource preservation professionals, cultural resource managers, maintenance personnel, and others working in the preservation field;

(3) take steps to apply preservation technology benefits from ongoing research by other agencies and institutions;

(4) facilitate the transfer of preservation technology among Federal agencies, State and local governments, universities, international organizations, and the private sector; and

(5) cooperate with related international organizations including, but not limited to the International Council on Monuments and Sites, the International center for the Study of Preservation and Restoration of Cultural Property, and the International Council on Museums.

**(c) Programs.** Such purposes shall be carried out through research, professional training, technical assistance, and programs for public awareness, and through a program of grants established under section 405.

**(d) Executive Director.** The Center shall be headed by an Executive Director with demonstrated expertise in historic preservation appointed by the Secretary with advice of the Board.

**(e) Assistance from Secretary.** The Secretary shall provide the Center assistance in obtaining such personnel, equipment, and facilities as may be needed by the Center to carry out its activities.

#### **Section 404**

**(a) Establishment.** There is established a Preservation Technology and Training Board.

**(b) Duties.** The Board shall–

(1) provide leadership, policy advice, and professional oversight to the Center;

(2) advise the Secretary on priorities and the allocation of grants among the activities of the Center; and

(3) submit an annual report to the President and the Congress.

**(c) Membership.** The Board shall be comprised of–

(1) The Secretary, or the Secretary's designee;

(2) 6 members appointed by the Secretary who shall represent appropriate Federal, State, and local agencies, State and local historic preservation commissions, and other public and international organizations, and

(3) 6 members appointed by the Secretary on the basis of outstanding professional qualifications who represent major organizations in the fields of archeology, architecture, conservation, curation, engineering, history, historic preservation, landscape architecture, planning, or preservation education.

#### **Section 405**

**(a) In general.** The Secretary, in consultation with the Board, shall provide preservation technology and training grants to eligible applicants with a demonstrated institutional capability and commitment to the purposes of the Center, in order to ensure an effective and efficient system of research, information distribution and skills training in all the related historic preservation fields.

### National Historic Preservation Act

#### (b) Grant requirements.

(1) Grants provided under this section shall be allocated in such a fashion to reflect the diversity of the historic preservation fields and shall be geographically distributed.

(2) No grant recipient may receive more than 10 percent of the grants allocated under this section within any year. (3) The total administrative costs, direct and indirect, charged for carrying out grants under this section may not exceed 25 percent of the aggregate costs.

(c) **Eligible applicants.** Eligible applicants may include Federal and non-Federal laboratories,

accredited museums, universities, non-profit organizations; offices, units, and Cooperative Park Study Units of the National Park System, State Historic Preservation Offices, tribal preservation offices, and Native Hawaiian organizations.

(d) **Standards.** All such grants shall be awarded in accordance with accepted professional standards and methods, including peer review of projects.

(e) **Authorization of appropriations.** There is authorized to be appropriated to carry out this section such sums as may be necessary.

#### Section 406

(a) **Acceptance of grants and transfers.** The Center may accept—

(1) grants and donations from private individuals, groups, organizations, corporations, foundations, and other entities; and

(2) transfers of funds from other Federal agencies.

(b) Contracts and cooperative agreements. Subject to appropriations, the Center may enter into contracts and cooperative agreements with Federal, State, local, and tribal governments, Native Hawaiian organizations, educational institutions, and other public entities to carry out the Center's responsibilities under this title.

(c) **Authorization of appropriations.** There are authorized to be appropriated such sums as may be necessary for the establishment, operation, and maintenance of the Center. Funds for the Center shall be in addition to existing National Park Service programs, centers, and offices.

#### Section 407

In order to improve the use of existing National Park Service resources, the Secretary shall fully utilize and further develop the National Park Service preservation (including conservation) centers and regional offices. The Secretary shall improve the coordination of such centers and offices within the National Park Service, and shall, where appropriate, coordinate their activities with the Center and with other appropriate parties.

### APPENDIX I

National Historic Preservation Act Amendments of 1980, Public Law 96-515, December 12, 1980, 94 Stat. 3000

This appendix contains related legislative provisions enacted in the National Historic Preservation Act Amendments of 1980 but that are not part of the National Historic Preservation Act.

#### **Section 208** (16 U.S.C. 469c 2)

Notwithstanding section 7(a) of the Act of June 27, 1960 (16 U.S.C. 469c) or any other provision of law to the contrary—

(1) identification, surveys, and evaluation carried out with respect to historic properties within project areas may be treated for purposes of any law or rule of law as planning costs of the project and not as costs of mitigation;

### **National Historic Preservation Act**

(2) reasonable costs for identification, surveys, evaluation, and data recovery carried out with respect to historic properties within project areas may be charged to Federal licensees and permittees as a condition to the issuance of such license or permit; and

(3) Federal agencies, with the concurrence of the Secretary and after notification of the Committee on Interior and Insular Affairs of the United States House of Representatives and the Committee on Energy and Natural Resources of the United States Senate, are authorized to waive, in appropriate cases, the 1 per centum limitation contained in section 7(a) of such Act.

#### **Section 401** (16 U.S.C. 470a 1)

(a) The Secretary of the Interior shall direct and coordinate United States participation in the Convention Concerning the Protection of the World Cultural and Natural Heritage, approved by the Senate on October 26, 1973, in cooperation with the Secretary of State, the Smithsonian Institution, and the Advisory Council on Historic Preservation. Whenever possible, expenditures incurred in carrying out activities in cooperation with other nations and international organizations shall be paid for in such excess currency of the country or area where the expense is incurred as may be available to the United States.

(b) The Secretary of the Interior shall periodically nominate properties he determines are of international significance to the World Heritage Committee on behalf of the United States. No property may be so nominated unless it has previously been determined to be of national significance. Each such nomination shall include evidence of such legal protections as may be necessary to ensure preservation of the property and its environment (including restrictive covenants, easements, or other forms of protection). Before making any such nomination, the Secretary shall notify the Committee on Interior and Insular Affairs of the United States House of Representatives and the Committee on Energy and Natural Resources of the United States Senate.

(c) No non-Federal property may be nominated by the Secretary of the Interior to the World Heritage Committee for inclusion on the World Heritage List unless the owner of the property concurs in writing to such nomination.

#### **Section 402** (16 U.S.C. 470a 2)

Prior to the approval of any Federal undertaking outside the United States which may directly and adversely affect a property which is on the World Heritage List or on the applicable country's equivalent of the National Register, the head of a Federal agency having direct or indirect jurisdiction over such undertaking shall take into account the effect of the undertaking on such property for purposes of avoiding or mitigating any adverse effects.

#### **Section 502** (16 U.S.C. 470a note)

The Secretary, in cooperation with the American Folklife Center of the Library of Congress shall, within two years after the date of the enactment of this act, submit a report to the President and the Congress on preserving and conserving the intangible elements of our cultural heritage such as arts, skills, folklife, and folkways. The report shall take into account the view of other public and private organizations, as appropriate. This report shall include recommendations for legislative and administrative actions by the Federal Government in order to preserve, conserve, and encourage the continuation of the diverse traditional prehistoric, historic, ethnic, and folk cultural traditions that underlie and are a living expression of our American heritage.

**National Historic Preservation Act****Section 503** (16 U.S.C. 470j note)***Council's report to the President and Congress: tax laws***

The Advisory Council on Historic Preservation, in cooperation with the Secretary and the Secretary of the Treasury, shall submit a report to the President and the Congress on Federal tax laws relating to historic preservation or affecting in any manner historic preservation. Such report shall include recommendations respecting amendments to such laws which would further the purposes of this Act. Such report shall be submitted within one year after the date of enactment of this Act.

**Section 504** (16 U.S.C. 470h note)

The Secretary shall submit a report directly to the President and the Congress on or before June 1, 1986, reviewing the operation of the Historic Preservation Fund and the national historic preservation program since the enactment of this Act and recommending appropriate funding levels, the time period for the reauthorization for appropriations from the fund, and other appropriate legislative action to be undertaken upon the expiration of the current fund authorization.

**Section 505** (40 U.S.C. 874 note)

The Pennsylvania Avenue Development Corporation shall review the development plan for those parts of the development area which are not under development or committed for development as of the date of the enactment of this Act, to identify means by which the historic values of such parts of the development area may be preserved and enhanced to the maximum extent feasible. The foregoing review shall not be limited by the applicable provisions of the development plan in effect at the time of the review; nor shall the review require any actions by the Corporation during the course of the review or during its consideration by the Congress. Within one year of the date of this act the Corporation shall submit to the appropriate committees of Congress a report containing the findings of the review required under this section, together with the Corporation's recommendations for any legislative measures or funding necessary to carry out the purposes of this section. The report shall also include a description of those activities which the Corporation proposes to undertake to carry out the purposes of this section and the financial implications of carrying out those activities.

**Section 506** (16 U.S.C. 470a note)

The Secretary shall undertake a comprehensive study and formulate recommendations for a coordinated system of cultural parks and historic conservation districts that provide for the preservation, interpretation, development, and use by public and private entities of the prehistoric, historic, architectural, cultural, and recreational resources found in definable urban areas throughout the Nation. The study shall propose alternatives concerning the management and funding of such system by public and private entities and by various levels of government. The Secretary shall submit a report of his study and recommendations to the President and the Congress within two years after the enactment of this Act.

**Section 507** (16 U.S.C. 470a note)

The Secretary, in cooperation with the Secretary of the Treasury, the Administrator of the United States Fire Administration, and the Administrator of the Federal Insurance Administration, shall submit a report to the President and the Congress on fire in historic properties. Such report shall include a review of Federal laws to determine any relationship between these laws and arson or fire by "suspicious origin", and to make recommendations

### **National Historic Preservation Act**

respecting amendments to such laws should a correlation be found to exist. Such report shall include the feasibility and necessity of establishing or developing protective measures at the Federal, State, or local level for the prevention, detection, and control of arson or fire by "suspicious origin" in historic properties. Such report shall also include recommendations regarding the Federal role in assisting the States and local governments with protecting historic properties from damage by fire. Such report shall be submitted within eighteen months after the date of enactment of this Act.

#### **APPENDIX II**

National Historic Preservation Act Amendments of 1992, Public Law 102□575, October 30, 1992, 106 Stat. 4753

This appendix contains related legislative provisions enacted in the National Historic Preservation Act Amendments of 1992 but that are not part of the National Historic Preservation Act.

#### **Section 4021** (16 U.S.C. 470a note)

The Secretary of the Interior, in consultation with the Advisory Council, shall seek to ensure that historic properties preserved under the National Historic Preservation Act fully reflect the historical experience of this nation.

#### **Section 4023** (16 U.S.C. 470a note)

Section 6 of the Act entitled "An Act to provide for the preservation of historic American sites, buildings, objects, and antiquities of national significance, and for other purposes" (16 U.S.C. 461□467) is amended to read as follows:

"**Sec. 6.** Requirement for specific authorization for projects under the Historic Sites, Buildings, and Antiquities Act.

"**(a) In general.** Except as provided in subsection (b), notwithstanding any other provision of law, no funds appropriated or otherwise made available to the Secretary of the Interior to carry out section 2(e) or 2(f) may be obligated or expended after the date of enactment of this section—

"**(1)** unless the appropriation of such funds has been specifically authorized by law enacted on or after the date of enactment of this section; or

"**(2)** in excess of the amount prescribed by law enacted on or after such date.

"**(b) Savings provision.** Nothing in this section shall prohibit or limit the expenditure of or obligation of any funds appropriated prior to January 1, 1993.

"**(c) Authorization of appropriations.** Except as provided by subsection (a), there is authorized to be appropriated for carrying out the purposes of this Act such sums as the Congress may from time to time determine."

#### **Section 4025** (16 U.S.C. 470a note)

**(a) Report.** Not later than one year after the date of enactment of this Act, the Secretary of the Interior shall prepare and submit to the Congress a report on the manner in which properties are listed or determined to be eligible for listing on the National Register, including but not limited to, the appropriateness of the criteria used in determining such eligibility, and the effect, if any, of such listing or finding of eligibility.

**(b) Preparation.** In preparing the report, the Secretary shall consult with, and consider the views and comments of other Federal agencies, as well as interested individuals and public and private organizations, and shall include representative comments received as an appendix to the report.

**National Historic Preservation Act**

**ENDNOTES**

<sup>1</sup>The wording of the "National Historic Preservation Act Amendments of 1992" is as passed in Title XL of HR429.

HR429 also contains an amendment to An Act to Establish the Martin Luther King, Jr. National Historic Site in the State of Georgia, Public Law 96□428; 94 Stat. 1839, which has not been reprinted.

8100 - THE FOUNDATIONS FOR MANAGING CULTURAL RESOURCES – (Public)

**Executive Order 11593**

**Title 3–The President**

**EXECUTIVE ORDER 11593**

**Protection and Enhancement of the Cultural Environment**

By virtue of the authority vested in me as President of the United States and in furtherance of the purposes and policies of the National Environmental Policy Act of 1969 (83 Stat. 852, 42 U.S.C. 4321 et seq.), the National Historic Preservation Act of 1966 (80 Stat. 915, 16 U.S.C. 470 et seq.), the Historic Sites Act of 1935 (49 Stat. 666, 16 U.S.C. 461 et seq.), and the Antiquities Act of 1906 (34 Stat. 225, 16 U.S.C. 431 et seq.), it is ordered as follows:

SECTION 1. *Policy.* The Federal Government shall provide leadership in preserving, restoring and maintaining the historic and cultural environment of the Nation. Agencies of the executive branch of the Government (hereinafter referred to as "Federal agencies") shall (1) administer the cultural properties under their control in a spirit of stewardship and trusteeship for future generations, (2) initiate measures necessary to direct their policies, plans and programs in such a way that federally owned sites, structures, and objects of historical, architectural or archaeological significance are preserved, restored and maintained for the inspiration and benefit of the people, and (3), in consultation with the Advisory Council on Historic Preservation (16 U.S.C. 470i), institute procedures to assure that Federal plans and programs contribute to the preservation and enhancement of non-federally owned sites, structures and objects of historical, architectural or archaeological significance.

SEC. 2. *Responsibilities of Federal agencies.* Consonant with the provisions of the acts cited in the first paragraph of this order, the heads of Federal agencies shall:

(a) no later than July 1, 1973, with the advice of the Secretary of the Interior, and in cooperation with the liaison officer for historic preservation for the State or territory involved, locate, inventory, and nominate to the Secretary of the Interior all sites, buildings, districts, and objects under their jurisdiction or control that appear to qualify for listing on the National Register of Historic Places.

(b) exercise caution during the interim period until inventories and evaluations required by subsection (a) are completed to assure that any federally owned property that might qualify for nomination is not inadvertently transferred, sold, demolished or substantially altered. The agency head shall refer any questionable actions to the Secretary of the Interior for an opinion respecting the property's eligibility for inclusion on the National Register of Historic Places. The Secretary shall consult with the liaison officer for historic preservation for the State or territory involved in arriving at his opinion. Where, after a reasonable period in which to review and evaluate the

8100 - THE FOUNDATIONS FOR MANAGING CULTURAL RESOURCES – (Public)

**Executive Order 11593**

property, the Secretary determines that the property is likely to meet the criteria prescribed for listing on the National Register of Historic Places, the Federal agency head shall reconsider the proposal in light of national environmental and preservation policy. Where, after such reconsideration, the Federal agency head proposes to transfer, sell, demolish or substantially alter the property he shall not act with respect to the property until the Advisory Council on Historic Preservation shall have been provided an opportunity to comment on the proposal.

(c) initiate measures to assure that where as a result of Federal action or assistance a property listed on the National Register of Historic Places is to be substantially altered or demolished, timely steps be taken to make or have made records, including measured drawings, photographs and maps, of the property, and that copy of such records then be deposited in the Library of Congress as part of the Historic American Buildings Survey or Historic American Engineering Record for future use and reference. Agencies may call on the Department of the Interior for advice and technical assistance in the completion of the above records.

(d) initiate measures and procedures to provide for the maintenance, through preservation, rehabilitation, or restoration, of federally owned and registered sites at professional standards prescribed by the Secretary of the Interior.

(e) submit procedures required pursuant to subsection (d) to the Secretary of the Interior and to the Advisory Council on Historic Preservation no later than January 1, 1972, and annually thereafter, for review and comment.

(f) cooperate with purchasers and transferees of a property listed on the National Register of Historic Places in the development of viable plans to use such property in a manner compatible with preservation objectives and which does not result in an unreasonable economic burden to public or private interests.

SEC. 3. *Responsibilities of the Secretary of the Interior.* The Secretary of the Interior shall:

(a) encourage State and local historic preservation officials to evaluate and survey federally owned historic properties and, where appropriate, to nominate such properties for listing on the National Register of Historic Places.

(b) develop criteria and procedures to be applied by Federal agencies in the reviews and nominations required by section 2(a). Such criteria and procedures shall be developed in consultation with the affected agencies.

(c) expedite action upon nominations to the National Register of Historic Places concerning federally owned properties proposed for sale, transfer, demolition or substantial alteration.

8100 - THE FOUNDATIONS FOR MANAGING CULTURAL RESOURCES – (Public)

**Executive Order 11593**

(d) encourage State and Territorial liaison officers for historic preservation to furnish information upon request to Federal agencies regarding their properties which have been evaluated with respect to historic, architectural or archaeological significance and which as a result of such evaluations have not been found suitable for listing on the National Register of Historic Places.

(e) develop and make available to Federal agencies and State and local governments information concerning professional methods and techniques for preserving, improving, restoring and maintaining historic properties.

(f) advise Federal agencies in the evaluation, identification, preservation, improvement, restoration and maintenance of historic properties.

(g) review and evaluate the plans of transferees of surplus Federal properties transferred for historic monument purposes to assure that the historic character of such properties is preserved in rehabilitation, restoration, improvement, maintenance and repair of such properties.

(h) review and comment upon Federal agency procedures submitted pursuant to section 2(e) of this order.

/s/ Richard Nixon

THE WHITE HOUSE,  
*May 13, 1971.*

8100 - THE FOUNDATIONS FOR MANAGING CULTURAL RESOURCES – (Public)

**American Indian Religious Freedom Act**

**PUBLIC LAW 95-341–AUG. 11, 1978**

**92 STAT. 469**

**Public Law 95-341**  
**95th Congress**

**Joint Resolution**

Aug. 11, 1978  
[S.J. Res. 102]

American Indian Religious Freedom

Whereas the freedom of religion for all people is an inherent right, fundamental to the democratic structure of the United States and is guaranteed by the First Amendment of the United States Constitution;

Whereas the United States has traditionally rejected the concept of a government denying individuals the right to practice their religion and, as a result, has benefited from a rich variety of religious heritages in this country;

Whereas the religious practices of the American Indian (as well as Native Alaskan and Hawaiian) are an integral part of their culture, tradition and heritage, such practices forming the basis of Indian identity and value systems:

Whereas the traditional American Indian religions, as an integral part of Indian life, are indispensable and irreplaceable;

Whereas the lack of a clear, comprehensive, and consistent Federal policy has often resulted in the abridgment of religious freedom for traditional American Indians;

Whereas such religious infringements result from the lack of knowledge or the insensitive and inflexible enforcement, of Federal policies and regulations premised on a variety of laws;

Whereas such laws were designed for such worthwhile purposes as conservation and preservation of natural species and resources but were never intended to relate to Indian religious practices and, therefore, were passed without consideration of their effect on traditional American Indian religions;

Whereas such laws and policies often deny American Indians access to sacred sites required in their religions, including cemeteries;

Whereas such laws at times prohibit the use and possession of sacred objects necessary to the exercise of religious rites and ceremonies;

Whereas traditional American Indian ceremonies have been intruded upon, interfered with, and in a few instances banned: Now, therefore, be it

*Resolved by the Senate and House of Representatives of the United States of America in Congress assembled,* That henceforth it shall be the policy of the United States to protect and preserve for American Indians their inherent right of freedom to believe, express, and exercise the traditional religions of the American Indian, Eskimo, Aleut, and Native Hawaiians, including but not limited to access to sites, use and possession of sacred objects, and the freedom to worship through ceremonials and traditional rites.

8100 - THE FOUNDATIONS FOR MANAGING CULTURAL RESOURCES – (Public)

**American Indian Religious Freedom Act**

SEC. 2. The President shall direct the various Federal departments, agencies, and other instrumentalities responsible for administering relevant laws to evaluate their policies and procedures in consultation with native traditional religious leaders in order to determine appropriate changes necessary to protect and preserve Native American religious cultural rights and practices. Twelve months after approval report of this resolution, the President shall report back to the Congress the results of his evaluation, including any changes which were made in administrative policies and procedures, and any recommendations he may have for legislative action.

Approved August 11, 1978.

LEGISLATIVE HISTORY:

HOUSE REPORT No. 95-1308 accompanying H.J. Res. 738 (Comm. on Interior and Insular Affairs).

SENATE REPORT No. 95-709 (Comm. on Indian Affairs).

CONGRESSIONAL RECORD, Vol. 124 (1978):

Apr. 3, considered and passed Senate.

July 18, H.J. Res. 738 considered and passed House; proceedings vacated and S.J. Res. 102, amended, passed in lieu.

July 27, Senate concurred in House amendment.

8100 - THE FOUNDATIONS FOR MANAGING CULTURAL RESOURCES – (Public)

**American Indian Religious Freedom Act**

**PUBLIC LAW 103-344—Oct 6, 1994**  
**103rd Congress**

**108 Stat. 3124**

**American Indian Religious Freedom Act Amendments of 1994**

*An Act*

To amend the American Indian Religious Freedom Act to provide for the traditional use of peyote by Indians for religious purposes, and for other purposes.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

SECTION 1. SHORT TITLE.

This Act may be cited as the “American Indian Religious Freedom Act Amendments of 1994”.

SEC. 2. TRADITIONAL INDIAN RELIGIOUS USE OF THE PEYOTE SACRAMENT.

The Act of August 11, 1978 (42 U.S.C. 1996), commonly referred to as the “American Indian Religious Freedom Act”, is amended by adding at the end thereof the following new section:

SEC. 3. (a) The Congress finds and declares that

(1) for many Indian people, the traditional ceremonial use of the peyote cactus as a religious sacrament has for centuries been integral to a way of life, and significant in perpetuating Indian tribes and cultures;

(2) since 1965, this ceremonial use of peyote by Indians has been protected by Federal regulation;

(3) while at least 28 States have enacted laws which are similar to, or are in conformance with, the Federal regulation which protects the ceremonial use of peyote by Indian religious practitioners, 22 States have not done so, and this lack of uniformity has created hardship for Indian people who participate in such religious ceremonies;

(4) the Supreme Court of the United States, in the case of *Employment Division v. Smith*, 494 U.S. 872 (1990), held that the First Amendment does not protect Indian practitioners who use peyote in Indian religious ceremonies, and also raised uncertainty whether this religious practice would be protected under the compelling State interest standard; and

(5) the lack of adequate and clear legal protection for the religious use of peyote by Indians may serve to stigmatize and marginalize Indian tribes and cultures, and increase the risk that they will be exposed to discriminatory treatment.

8100 - THE FOUNDATIONS FOR MANAGING CULTURAL RESOURCES – (Public)

**American Indian Religious Freedom Act**

(b)(1) Notwithstanding any other provision of law, the use, possession, or transportation of peyote by an Indian for bona fide traditional ceremonial purposes in connection with the practice of a traditional Indian religion is lawful, and shall not be prohibited by the United States or any State. No Indian shall be penalized or discriminated against on the basis of such use, possession or transportation, including, but not limited to, denial of otherwise applicable benefits under public assistance programs.

(2) This section does not prohibit such reasonable regulation and registration by the Drug Enforcement Administration of those persons who cultivate, harvest, or distribute peyote as may be consistent with the purposes of this Act.

(3) This section does not prohibit application of the provisions of section 481.111(a) of Vernon's Texas Health and Safety Code Annotated, in effect on the date of enactment of this section, insofar as those provisions pertain to the cultivation, harvest, and distribution of peyote.

(4) Nothing in this section shall prohibit any Federal department or agency, in carrying out its statutory responsibilities and functions, from promulgating regulations establishing reasonable limitations on the use or ingestion of peyote prior to or during the performance of duties by sworn law enforcement officers or personnel directly involved in public transportation or any other safety-sensitive positions where the performance of such duties may be adversely affected by such use or ingestion. Such regulations shall be adopted only after consultation with representatives of traditional Indian religions for which the sacramental use of peyote is integral to their practice. Any regulation promulgated pursuant to this section shall be subject to the balancing test set forth in section 3 of the Religious Freedom Restoration Act (Public Law 103-141; 42 U.S.C. 2000bb1).

(5) This section shall not be construed as requiring prison authorities to permit, nor shall it be construed to prohibit prison authorities from permitting, access to peyote by Indians while incarcerated within Federal or State prison facilities.

(6) Subject to the provisions of the Religious Freedom Restoration Act (Public Law 103-141; 42 U.S.C. 2000bb1), this section shall not be construed to prohibit States from enacting or enforcing reasonable traffic safety laws or regulations.

(7) Subject to the provisions of the Religious Freedom Restoration Act (Public Law 103-141; 42 U.S.C. 2000bb1), this section does not prohibit the Secretary of Defense from promulgating regulations establishing reasonable limitations on the use, possession, transportation, or distribution of peyote to promote military readiness, safety, or compliance with international law or laws of other countries. Such regulations shall be adopted only after consultation with representatives of traditional Indian religions for which the sacramental use of peyote is integral to their practice.

8100 - THE FOUNDATIONS FOR MANAGING CULTURAL RESOURCES – (Public)

**American Indian Religious Freedom Act**

(c) For purposes of this section—

(1) the term “Indian” means a member of an Indian tribe;

(2) the term “Indian tribe” means any tribe, band, nation, pueblo, or other organized group or community of Indians, including any Alaska Native village (as defined in, or established pursuant to, the Alaska Native Claims Settlement Act (43 U.S.C. 1601 et seq.)), which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians;

(3) the term “Indian religion” means any religion --

(A) which is practiced by Indians, and

(B) the origin and interpretation of which is from within a traditional Indian culture or community; and

(4) the term “State” means any State of the United States, and any political subdivision thereof.

(d) Nothing in this section shall be construed as abrogating, diminishing, or otherwise affecting—

(1) the inherent rights of any Indian tribe;

(2) the rights, express or implicit, of any Indian tribe which exist under treaties, Executive orders, and laws of the United States;

(3) the inherent right of Indians to practice their religions; and

(4) the right of Indians to practice their religions under any Federal or State law.

Approved October 6, 1994

H.R.4230

8100 - THE FOUNDATIONS FOR MANAGING CULTURAL RESOURCES – (Public)

**Archaeological Resources Protection Act**

PUBLIC LAW 96-95–OCT. 31, 1979

93 STAT. 721

To protect archaeological resources on public lands and Indian lands, Oct. 31, 1979  
and for other purposes. [H.R. 1825]

*Be it enacted by the Senate and the House of Representatives of the United States of America in Congress assembled,*

SHORT TITLE

SECTION 1. This Act may be cited as the "Archaeological Resources Protection Act of 1979".

FINDINGS AND PURPOSE

SEC. 2. (a) The Congress finds that—

- (1) archaeological resources on public lands and Indian lands are an accessible and irreplaceable part of the Nation's heritage;
- (2) these resources are increasingly endangered because of their commercial attractiveness;
- (3) existing Federal laws do not provide adequate protection to prevent the loss and destruction of these archaeological resources and sites resulting from uncontrolled excavations and pillage; and
- (4) there is a wealth of archaeological information which has been legally obtained by private individuals for noncommercial purposes and which could voluntarily be made available to professional archaeologists and institutions.

(b) The purpose of this Act is to secure, for the present and future benefit of the American people, the protection of archaeological resources and sites which are on public lands and Indian lands, and to foster increased cooperation and exchange of information between governmental authorities, the professional archaeological community, and private individuals having collections of archaeological resources and data which were obtained before the date of the enactment of this Act.

DEFINITIONS

SEC. 3. As used in this Act—

- (1) The term "archaeological resource" means any material remains of past human life or activities which are of archaeological interest, as determined under uniform regulations promulgated pursuant to this Act. Such regulations containing such determination shall include, but not be limited to: pottery, basketry, bottles, weapons, weapon projectiles, tools, structures or portions of structures, pit houses, rock paintings, rock carvings, intaglios, graves, human skeletal materials, or any portion or piece of any of the foregoing items. Nonfossilized and fossilized paleontological specimens, or any portion or piece thereof, shall not be considered archaeological resources, under the regulations under this paragraph, unless found in an archaeological context. No item shall be treated as an archaeological resource under regulations under this paragraph unless such item is at least 100 years of age.

8100 - THE FOUNDATIONS FOR MANAGING CULTURAL RESOURCES – (Public)

**Archaeological Resources Protection Act**

(2) The term "Federal land manager" means, with respect to any public lands, the Secretary of the department, or the head of any other agency or instrumentality of the United States, having primary management authority over such lands. In the case of any public lands or Indian lands with respect to which no department, agency, or instrumentality has primary management authority, such term means the Secretary of the Interior. If the Secretary of the Interior consents, the responsibilities (in whole or in part) under this Act of the Secretary of any department (other than the Department of the Interior) or the head of any other agency or instrumentality may be delegated to the Secretary of the Interior with respect to any land managed by such other Secretary or agency head, and in any such case, the term "Federal land manager" means the Secretary of the Interior.

(3) The term "Public lands" means

(A) lands which are owned and administered by the United States as part of—

- (i) the national park system,
- (ii) the national wildlife refuge system, or
- (iii) the national forest system; and

(B) all other lands the fee title to which is held by the United States, other than lands on the Outer Continental Shelf and lands which are under the jurisdiction of the Smithsonian Institution;

(4) The term "Indian lands" means lands of Indian tribes, or Indian individuals, which are either held in trust by the United States or subject to a restriction against alienation imposed by the United States, except for any subsurface interests in lands not owned or controlled by an Indian tribe or an Indian individual.

(5) The term "Indian tribe" means any Indian tribe, band, nation, or other organized group or community, including any Alaska Native village or regional or village corporation as defined in, or established pursuant to, the Alaska Native Claims Settlement Act (85 Stat. 688).

(6) The term "Person" means an individual, corporation, partnership, trust, institution, association, or any other private entity or any officer, employee, agent, department, or instrumentality of the United States, of any Indian tribe, or of any State or political subdivision thereof.

(7) The term "State" means any of the fifty States, the District of Columbia, Puerto Rico, Guam, and the Virgin Islands.

**EXCAVATION AND REMOVAL**

SEC. 4. (a) Any person may apply to the Federal land manager for a permit to excavate or remove any archaeological resource located on public lands or Indian lands and to carry out activities associated with such excavation or removal. The application shall be required, under uniform regulations under this Act, to contain such information as the Federal land manager deems necessary, including information concerning the time, scope, and location and specific purpose of the proposed work.

(b) A permit may be issued pursuant to an application under subsection (a) if the Federal land manager determines, pursuant to uniform regulations under this Act, that

- (1) the applicant is qualified, to carry out the permitted activity,
- (2) the activity is undertaken for the purpose of furthering archaeological knowledge in the public interest,

8100 - THE FOUNDATIONS FOR MANAGING CULTURAL RESOURCES – (Public)

**Archaeological Resources Protection Act**

(3) the archaeological resources which are excavated or removed from public lands will remain the property of the United States, and such resources and copies of associated archaeological records and data will be preserved by a suitable university, museum, or other scientific or educational institution, and

(4) the activity pursuant to such permit is not inconsistent with any management plan applicable to the public lands concerned.

(c) If a permit issued under this section may result in harm to, or destruction of, any religious or cultural site, as determined by the Federal land manager, before issuing such permit, the Federal land manager shall notify any Indian tribe which may consider the site as having religious or cultural importance. Such notice shall not be deemed a disclosure to the public for purposes of section 9.

(d) Any permit under this section shall contain such terms and conditions, pursuant to uniform regulations promulgated under this Act, as the Federal land manager concerned deems necessary to carry out the purposes of this Act.

(e) Each permit under this section shall identify the individual who shall be responsible for carrying out the terms and conditions of the permit and for otherwise complying with this Act and other law applicable to the permitted activity.

(f) Any permit issued under this section may be suspended by the Federal land manager upon his determination that the permittee has violated any provision of subsection (a), (b), or (c) of section 6. Any such permit may be revoked by such Federal land manager upon assessment of a civil penalty under section 7 against the permittee or upon the permittee's conviction under section 6.

(g)(1) No permit shall be required under this section or under the Act of June 8, 1906 (16 U.S.C. 431), for the excavation or removal by any Indian tribe or member thereof of any archaeological resource located on Indian lands of such Indian tribe, except that in the absence of tribal law regulating the excavation or removal of archaeological resources on Indian lands, an individual tribal member shall be required to obtain a permit under this section.

(2) In the case of any permits for the excavation or removal of any archaeological resource located on Indian lands, the permit may be granted only after obtaining the consent of the Indian or Indian tribe owning or having jurisdiction over such lands. The permit shall include such terms and conditions as may be requested by such Indian or Indian tribe.

(h)(1) No permit or other permission shall be required under the Act of June 8, 1906 (16 U.S.C. 431-433), for any activity for which a permit is issued under this section.

(2) Any permit issued under the Act of June 8, 1906, shall remain in effect according to its terms and conditions following the enactment of this Act. No permit under this Act shall be required to carry out any activity under a permit issued under the Act of June 8, 1906, before the date of the enactment of this Act which remains in effect as provided in this paragraph, and nothing in this Act shall modify or affect any such permit.

(i) Issuance of a permit in accordance with this section and applicable regulations shall not require compliance with section 106 of the Act of October 15, 1966 (80 Stat. 917, 16 U.S.C. 470f).

(j) Upon the written request of the Governor of any State, the Federal land manager shall issue a permit, subject to the provisions of subsections (b)(3), (b)(4), (c), (e), (f), (g), (h), and (i) of this section for the purpose of conducting archaeological research, excavation, removal, and curation, on behalf of the State or its educational institutions, to such Governor or to such designee as the Governor deems qualified to carry out the intent of this Act.

8100 - THE FOUNDATIONS FOR MANAGING CULTURAL RESOURCES – (Public)

**Archaeological Resources Protection Act**

CUSTODY OF RESOURCES

SEC. 5. The Secretary of the Interior may promulgate regulations providing for—

- (1) the exchange, where appropriate, between suitable universities, museums, or other scientific or educational institutions, of archaeological resources removed from public lands and Indian lands pursuant to this Act, and
- (2) the ultimate disposition of such resources and other resources removed pursuant to the Act of June 27, 1960 (16 U.S.C. 469-469c) or the Act of June 8, 1906 (16 U.S.C. 431-433).

Any exchange or ultimate disposition under such regulation of archaeological resources excavated or removed from Indian lands shall be subject to the consent of the Indian or Indian tribe which owns or has jurisdiction over such lands. Following promulgation of regulations under this section, notwithstanding any other provision of law, such regulations shall govern the disposition of archaeological resources removed from public lands and Indian lands pursuant to this Act.

PROHIBITED ACTS AND CRIMINAL PENALTIES

SEC. 6. (a) No person may excavate, remove, damage, or otherwise alter or deface any archaeological resource located on public lands or Indian lands unless such activity is pursuant to a permit issued under section 4, a permit referred to in section 4(h)(2), or the exemption contained in section 4(g)(1).

(b) No person may sell, purchase, exchange, transport, receive, or offer to sell, purchase, or exchange any archaeological resource if such resource was excavated or removed from public lands or Indian lands in violation of

- (1) the prohibition contained in subsection (a), or
- (2) any provision, rule, regulation, ordinance, or permit in effect under any other provision of Federal law.

(c) No person may sell, purchase, exchange, transport, receive, or offer to sell, purchase, or exchange, in interstate or foreign commerce, any archaeological resource excavated, removed, sold, purchased, exchanged, transported, or received in violation of any provision, rule, regulation, ordinance, or permit in effect under State or local law.

(d) Any person who knowingly violates, or counsels, procures, solicits, or employs any other person to violate, any prohibition contained in subsection (a), (b), or (c) of this section shall, upon conviction, be fined not more than \$10,000 or imprisoned not more than one year, or both: *Provided, however,* That if the commercial or archaeological value of the archaeological resources involved and the cost of restoration and repair of such resources exceeds the sum of \$5,000, such person shall be fined not more than \$20,000 or imprisoned not more than two years, or both. In the case of a second or subsequent such violation upon conviction such person shall be fined not more than \$100,000, or imprisoned not more than five years, or both.

(e) The prohibitions contained in this section shall take effect on the date of the enactment of this Act.

8100 - THE FOUNDATIONS FOR MANAGING CULTURAL RESOURCES – (Public)

**Archaeological Resources Protection Act**

(f) Nothing in subsection (b)(1) of this section shall be deemed applicable to any person with respect to an archaeological resource which was in the lawful possession of such person prior to the date of the enactment of this Act.

(g) Nothing in subsection (d) of this section shall be deemed applicable to any person with respect to the removal of arrowheads located on the surface of the ground.

**CIVIL PENALTIES**

SEC. 7. (a)(1) Any person who violates any prohibition contained in an applicable regulation or permit issued under this Act may be assessed a civil penalty by the Federal land manager concerned. No penalty may be assessed under this subsection unless such person is given notice and opportunity for a hearing with respect to such violation. Each violation shall be a separate offense. Any such civil penalty may be remitted or mitigated by the Federal land manager concerned.

(2) The amount of such penalty shall be determined under regulations promulgated pursuant to this Act, taking into account, in addition to other factors—

(A) the archaeological or commercial value of the archaeological resource involved, and

(B) the cost or restoration and repair of the resource and the archaeological site involved.

Such regulations shall provide that, in the case of a second or subsequent violation by any person, the amount of such civil penalty may be double the amount which would have been assessed if such violation were the first violation by such person. The amount of any penalty assessed under this subsection for any violation shall not exceed an amount equal to double the cost of restoration or repair of resources and archaeological sites damaged and double the fair market value of resources destroyed or not recovered.

(3) No penalty shall be assessed under this section for the removal of arrowheads located on the surface of the ground.

(b)(1) Any person aggrieved by an order assessing a civil penalty under subsection (a) may file a petition for judicial review of such order with the United States District Court for the District of Columbia or for any other district in which such a person resides or transacts business. Such a petition may only be filed within the 30-day period beginning on the date the order making such assessment was issued. The court shall hear such action on the record made before the Federal land manager and shall sustain his action if it is supported by substantial evidence on the record considered as a whole.

(2) If any person fails to pay an assessment of a civil penalty—

(A) after the order making the assessment has become a final order and such person has not filed a petition for judicial review of the order in accordance with paragraph (1), or

(B) after a court in an action brought under paragraph (1) has entered a final judgment upholding the assessment of a civil penalty,

the Federal land managers may request the Attorney General to institute a civil action in a district court of the United States for any district in which such person is found, resides, or transacts business to collect the penalty and such court shall have jurisdiction to hear and decide any such action. In such action, the validity and amount of such penalty shall not be subject to review.

(c) Hearings held during proceedings for the assessment of civil penalties authorized by subsection (a) shall be conducted in accordance with section 554 of title 5 of the United States Code. The Federal land manager may issue subpoenas for the attendance and testimony of witnesses and the production of relevant papers, books, and documents, and administer

8100 - THE FOUNDATIONS FOR MANAGING CULTURAL RESOURCES – (Public)

**Archaeological Resources Protection Act**

oaths. Witnesses summoned shall be paid the same fees and mileage that are paid to witnesses in the courts of the United States. In case of contumacy or refusal to obey a subpoena served upon any person pursuant to this paragraph, the district court of the United States for any district in which such person is found or resides or transacts business, upon application by the United States and after notice to such person, shall have jurisdiction to issue an order requiring such person to appear and give testimony before the Federal land manager or to appear and produce documents before the Federal land manager, or both, and any failure to obey such order of the court may be punished by such court as a contempt thereof.

REWARDS; FORFEITURE

SEC. 8. (a) Upon the certification of the Federal land manager concerned, the Secretary of the Treasury is directed to pay, from penalties and fines collected under sections 6 and 7 an amount equal to one-half of such penalty or fine, but, not to exceed \$500, to any person who furnishes information which leads to the finding of a civil violation, or the conviction of criminal violation, with respect to which such penalty or fine was paid. If several persons provided such information, such amount shall be divided among such persons. No officer or employee of the United States or of any State or local government who furnishes information or renders service in the performance of his official duties shall be eligible for payment under this subsection.

(b) All archaeological resources with respect to which a violation of subsection (a), (b), or (c) of section 6 occurred and which are in the possession of any person, and all vehicles and equipment of any person which were used in connection with such violation, may be (in the discretion of the court or administrative law judge, as the case may be) subject to forfeiture to the United States upon

- (1) such person's conviction of such violation under section 6,
- (2) assessment of a civil penalty against such person under section 7 with respect to such violation, or
- (3) a determination by any court that such archaeological resources, vehicles, or equipment were involved in such violation.

(c) In cases in which a violation of the prohibition contained in subsection (a), (b), or (c) of section 6 involve archaeological resources excavated or removed from Indian lands, the Federal land manager or the court, as the case may be, shall provide for the payment to the Indian or Indian tribe involved of all penalties collected pursuant to section 7 and for the transfer to such Indian or Indian tribe of all items forfeited under this section.

CONFIDENTIALITY

SEC. 9. (a) Information concerning the nature and location of any archaeological resource for which the excavation or removal requires a permit or other permission under this Act or under any other provision of Federal law may not be made available to the public under subchapter II of chapter 5 of title 5 of the United States Code or under any other provision of law unless the Federal land manager concerned determines that such disclosure would—

- (1) further the purposes of this Act or the Act of June 27, 1960 (16 U.S.C. 469-469c), and

8100 - THE FOUNDATIONS FOR MANAGING CULTURAL RESOURCES – (Public)

**Archaeological Resources Protection Act**

(2) not create a risk of harm to such resources or to the site at which such resources are located.

(b) Notwithstanding the provisions of subsection (a), upon the written request of the Governor of any State, which request shall state—

(1) the specific site or area for which information is sought,

(2) the purpose for which such information is sought,

(3) a commitment by the Governor to adequately protect the confidentiality of such information to protect the resource from commercial exploitation,

the Federal land manager concerned shall provide to the Governor information concerning the nature and location of archaeological resources within the State of the requesting Governor.

REGULATIONS; INTERGOVERNMENTAL COORDINATION

SEC. 10. (a) The Secretaries of the Interior, Agriculture and Defense and the Chairman of the Board of the Tennessee Valley Authority after consultation with other Federal land managers, Indian tribes, representatives of concerned State agencies, and after public notice and hearing, shall promulgate such uniform rules and regulations as may be

appropriate to carry out the purposes of this Act. Such rules and regulations may be promulgated only after consideration of the provisions of the American Indian Religious Freedom Act (92 Stat. 469; 42 U.S.C. 1996). Each uniform rule or regulation promulgated under this Act shall be submitted on the same calendar day to the Committee on Energy and Natural Resources of the United States Senate and to the Committee on Interior and Insular Affairs of the United States House of Representatives, and no such uniform rule or regulation may take effect before the expiration of a period of ninety calendar days following the date of its submission to such Committees.

(b) Each Federal land manager shall promulgate such rules and regulations, consistent with the uniform rules and regulations under subsection (a), as may be appropriate for the carrying out of his functions and authorities under this Act.

COOPERATION WITH PRIVATE INDIVIDUALS

SEC. 11. The Secretary of the Interior shall take such action as may be necessary, consistent with the purposes of this Act, to foster and improve the communication, cooperation, and exchange of information between

(1) private individuals having collections of archaeological resources and data which were obtained before the date of the enactment of this Act, and

(2) Federal authorities responsible for the protection of archaeological resources on the public lands and Indian lands and professional archaeologists and associations of professional archaeologists.

In carrying out this section, the Secretary shall, to the extent practicable and consistent with the provisions of this Act, make efforts to expand the archaeological data base for the archaeological resources of the United States through increased cooperation between private individuals referred to in paragraph (1) and professional archaeologists and archaeological organizations.

8100 - THE FOUNDATIONS FOR MANAGING CULTURAL RESOURCES – (Public)

**Archaeological Resources Protection Act**

SAVINGS PROVISIONS

SEC. 12. (a) Nothing in this Act shall be construed to repeal, modify, or impose additional restrictions on the activities permitted under existing laws and authorities relating to mining, mineral leasing, reclamation, and other multiple uses of the public lands.

(b) Nothing in this Act applies to, or requires a permit for, the collection for private purposes of any rock, coin, bullet, or mineral which is not an archaeological resource, as determined under uniform regulations promulgated under section 3(1).

(c) Nothing in this Act shall be construed to affect an land other than public land or Indian land or to affect the lawful recovery, collection, or sale of archaeological resources from land other than public land or Indian land.

REPORT

SEC. 13. As part of the annual report required to be submitted to the specified committees of the Congress pursuant to section 5(c) of the Act of June 27, 1960 (74 Stat. 220; 16 U.S.C. 469-469a), the Secretary of the Interior shall comprehensively report as a separate component on the activities carried out under the provisions of this Act, and he shall make such recommendations as he deems appropriate as to changes or improvements needed in the provisions of this Act. Such report shall include a brief summary of the actions undertaken by the Secretary under section 11 of this Act, relating to cooperation with private individuals.

Approved October 31, 1979.

LEGISLATIVE HISTORY:

HOUSE REPORT No. 96-311 (Comm. on Interior and Insular Affairs).

SENATE REPORT No. 96-179 accompanying S. 490 (Comm. on Energy and Natural Resources).

CONGRESSIONAL RECORD, Vol. 125 (1979):

July 9, considered and passed House.

July 30, considered and passed Senate, amended, in lieu of S. 490.

Oct. 12, House agreed to Senate amendments with an amendment.

Oct. 17, Senate concurred in House amendment.

8100 - THE FOUNDATIONS FOR MANAGING CULTURAL RESOURCES – (Public)

**Archaeological Resources Protection Act**

PUBLIC LAW 100-555–OCT. 28, 1988

An Act

To improve the protection and management of archeological resources on Federal land.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That the Archaeological Resources Protection Act of 1979 (Public Law 96-95; 16 U.S.C. 470ii) be amended to add the following new section after section 13:

"SEC. 14. The Secretaries of the Interior, Agriculture, and Defense and the Chairman of the Board of the Tennessee Valley Authority shall–

"(a) develop plans for surveying lands under their control to determine the nature and extent of archaeological resources on those lands;

"(b) prepare a schedule for surveying lands that are likely to contain the most scientifically valuable archaeological resources; and

"(c) develop documents for the reporting of suspected violations of this Act and establish when and how those documents are to be completed by officers, employees, and agents of their respective agencies."

*Speaker of the House of Representatives.*

*Vice President of the United States and  
President of the Senate.*

S. 1985

8100 - THE FOUNDATIONS FOR MANAGING CULTURAL RESOURCES – (Public)

**Archaeological Resources Protection Act**

PUBLIC LAW 100–588–NOV. 3, 1988

To amend the Archaeological Resources Protection Act of 1979 to strengthen the enforcement provisions of that Act, and for other purposes. Nov. 3, 1988  
[H.R. 4068]

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

SECTION 1. AMENDMENTS TO ARCHAEOLOGICAL RESOURCES PROTECTION ACT OF 1979.

(a) Section 3(3) of such Act is amended by striking out the semi-colon at the end thereof and substituting a period.

(b) Section 6(a) of such Act is amended by inserting after "deface" the following: ", or attempt to excavate, remove, damage, or otherwise alter or deface".

(c) Section 6(d) of such Act is amended by striking "\$5,000" and inserting in lieu thereof "\$500".

(d) Section 10 of such Act is amended by adding the following new subsection at the end thereof:

"(c) Each Federal land manager shall establish a program to increase public awareness of the significance of the archaeological resources located on public lands and Indian lands and the need to protect such resources. Each such land manager shall submit an annual report to the Committee on Interior and Insular Affairs of the United States House of Representatives and to the Committee on Energy and Natural Resources of the United States Senate regarding the actions taken under such program."

Approved November 3, 1988.

LEGISLATIVE HISTORY—H.R. 4068 (S. 1985):

HOUSE REPORTS: No. 100-791, Pt. 1 (Comm. on Interior and Insular Affairs).

SENATE REPORTS: No. 100-566 (Comm. on Energy and Natural Resources)  
and No. 100-569 accompanying S. 1985 (Comm. on Energy and Natural Resources).

CONGRESSIONAL RECORD, Vol. 134 (1988):

July 26, considered and passed House.

Oct. 14, considered and passed Senate, amended.

Oct. 19, House concurred in Senate amendment.

8100 - THE FOUNDATIONS FOR MANAGING CULTURAL RESOURCES – (Public)

**Native American Graves Protection and Repatriation Act**

Public Law 101-601  
101st Congress

**An Act**

Nov. 16, 1990  
[H.R. 5237]

To provide for the protection of Native American graves, and for other purposes

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

SECTION 1. SHORT TITLE.

This Act may be cited as the "Native American Graves Protection and Repatriation Act".

SEC. 2. DEFINITIONS.

For purposes of this Act, the term—

(1) "burial site" means any natural or prepared physical location, whether originally below, on, or above the surface of the earth, into which as a part of the death rite or ceremony of a culture, individual human remains are deposited.

(2) "cultural affiliation" means that there is a relationship of shared group identity which can be reasonably traced historically or prehistorically between a present day Indian tribe or Native Hawaiian organization and an identifiable earlier group.

(3) "cultural items" means human remains and—

(A) "associated funerary objects" which shall mean objects that, as a part of the death rite or ceremony of a culture, are reasonably believed to have been placed with individual human remains either at the time of death or later, and both the human remains and associated funerary objects are presently in the possession or control of a federal agency or museum, except that other items exclusively made for burial purposes or to contain human remains shall be considered as associated funerary objects.

(B) "unassociated funerary objects" which shall mean objects that, as a part of the death rite or ceremony of a culture, are reasonably believed to have been placed with individual human remains either at the time of death or later, where the remains are not in the possession or control of the Federal agency or museum and the objects can be identified by a preponderance of the evidence as related to specific individuals or families or to known human remains or, by a preponderance of the evidence, as having been removed from a specific burial site of an individual culturally affiliated with a particular Indian tribe,

(C) "sacred objects" which shall mean specific ceremonial objects which are needed by traditional Native American religious leaders for the practice of traditional Native American religions by their present day adherents, and

(D) "cultural patrimony" which shall mean an object having ongoing historical, traditional, or cultural importance central to the Native American group or culture itself, rather than property owned by an individual Native American, and which, therefore, cannot be alienated, appropriated, or conveyed

8100 - THE FOUNDATIONS FOR MANAGING CULTURAL RESOURCES – (Public)

**Native American Graves Protection and Repatriation Act**

by any individual regardless of whether or not the individual is a member of the Indian tribe or Native Hawaiian organization and such object shall have been considered inalienable by such Native American group at the time the object was separated from such group.

(4) "Federal agency" means any department, agency, or instrumentality of the United States and shall include, except as may be inconsistent with the provisions of P.L. 101-185, the Smithsonian Institution.

(5) "Federal lands" means any land other than tribal lands which are controlled or owned by the United States.

(6) "Hui Malama I Na Kupuna O Hawai'i Nei" means the nonprofit, Native Hawaiian organization incorporated under the laws of the State of Hawaii by that name on April 17, 1989, for the purpose of providing guidance and expertise in decisions dealing with Native Hawaiian cultural issues, particularly burial issues.

(7) "Indian tribe" means any tribe, band, nation, or other organized Indian group or community of Indians, including any Alaska Native village (as defined in, or established pursuant to, the Alaska Native Claims Settlement Act), which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.

(8) "museum" means any institution or State or local government agency (including any institution of higher learning) that receives Federal funds and has possession of, or control over, Native American cultural items. Such term does not include the Smithsonian Institution or any other Federal agency.

(9) "Native American" means of, or relating to, a tribe, people, or culture that is indigenous to the United States.

(10) "Native Hawaiian" means any individual who is a descendant of the aboriginal people who, prior to 1778, occupied and exercised sovereignty in the area that now constitutes the State of Hawaii.

(11) "Native Hawaiian organization" means any organization which—

(A) serves and represents the interests of Native Hawaiians,

(B) has a primary and stated purpose the provision of services to Native Hawaiians, and

(C) has expertise in Native Hawaiian Affairs, and

shall include the Office of Hawaiian Affairs and Hui Malama I Na Kupuna O Hawai'i Nei.

(12) "Office of Hawaiian Affairs" means the Office of Hawaiian Affairs established by the constitution of the State of Hawaii.

(13) "right of possession" means possession obtained with the voluntary consent of an individual or group that had authority of alienation. The original acquisition of an unassociated Native American funerary object, sacred object, or object of cultural patrimony from an Indian tribe or Native Hawaiian organization with the voluntary consent of an individual or group with authority to alienate such object is deemed to give right of possession of that object, unless the phrase so defined would, as applied in section 7(c), result in a Fifth Amendment taking by the United States as determined by the United States Claims Court pursuant to 28 U.S.C. 1491 in which event the "right of possession" shall be as provided under otherwise applicable property law. The original acquisition of Native American

8100 - THE FOUNDATIONS FOR MANAGING CULTURAL RESOURCES – (Public)

**Native American Graves Protection and Repatriation Act**

human remains and associated funerary objects which were excavated, exhumed, or otherwise obtained with full knowledge and consent of the next of kin or the official governing body of the appropriate culturally affiliated Indian tribe or Native Hawaiian organization is deemed to give right of possession to those remains.

(14) "Secretary" means the Secretary of the Interior.

(15) "tribal land" means—

(A) all lands within the exterior boundaries of any Indian reservation;

(B) all dependent Indian communities;

(C) any lands administered for the benefit of Native Hawaiians pursuant to the Hawaiian Homes Commission Act, 1920, and section 4 of Public Law 86-3.

SEC. 3. OWNERSHIP.

(a) NATIVE AMERICAN HUMAN REMAINS AND OBJECTS.—The ownership or control of Native American cultural items which are excavated or discovered on Federal or tribal lands after the date of enactment of this Act shall be (with priority given in the order listed)—

(1) in the case of Native American human remains and associated funerary objects, in the lineal descendants of the Native American; or

(2) in any case in which such lineal descendants cannot be ascertained, and in the case of unassociated funerary objects, sacred objects, and objects of cultural patrimony—

(A) in the Indian tribe or Native Hawaiian organization on whose tribal land such objects or remains were discovered;

(B) in the Indian tribe or Native Hawaiian organization which has the closest cultural affiliation with such remains or objects and which, upon notice, states a claim for such remains or objects; or

(C) if the cultural affiliation of the objects cannot be reasonably ascertained and if the objects were discovered on Federal land that is recognized by a final judgment of the Indian Claims Commission or the United States Court of Claims as the aboriginal land of some Indian tribe—

(1) in the Indian tribe that is recognized as aboriginally occupying the area in which the objects were discovered, if upon notice, such tribe states a claim for such remains or objects, or

(2) if it can be shown by a preponderance of the evidence that a different tribe has a stronger cultural relationship with the remains or objects than the tribe or organization specified in paragraph (1), in the Indian tribe that has the strongest demonstrated relationship, if upon notice, such tribe states a claim for such remains or objects.

(b) UNCLAIMED NATIVE AMERICAN HUMAN REMAINS AND OBJECTS.—Native American cultural items not claimed under subsection (a) shall be disposed of in accordance with regulations promulgated by the Secretary in consultation with the review committee established under section 8, Native American groups, representatives of museums and the scientific community.

(c) INTENTIONAL EXCAVATION AND REMOVAL OF NATIVE AMERICAN HUMAN REMAINS AND OBJECTS.—The intentional removal from or excavation of Native American cultural items from Federal or tribal lands for purposes of discovery, study,

8100 - THE FOUNDATIONS FOR MANAGING CULTURAL RESOURCES – (Public)

**Native American Graves Protection and Repatriation Act**

or removal of such items is permitted only if–

- (1) such items are excavated or removed pursuant to a permit issued under section 4 of the Archaeological Resources Protection Act of 1979 (93 Stat. 721; 16 U.S.C. 470aa et seq.) which shall be consistent with this Act;
- (2) such items are excavated or removed after consultation with or, in the case of tribal lands, consent of the appropriate (if any) Indian tribe or Native Hawaiian organization;
- (3) the ownership and right of control of the disposition of such items shall be as provided in subsections (a) and (b); and
- (4) proof of consultation or consent under paragraph (2) is shown.

(d) **INADVERTENT DISCOVERY OF NATIVE AMERICAN REMAINS AND OBJECTS.**–(1) Any person who knows, or has reason to know, that such person has discovered Native American cultural items on Federal or tribal lands after the date of enactment of this Act shall notify, in writing, the Secretary of the Department, or head of any other agency or instrumentality of the United States, having primary management authority with respect to Federal lands and the appropriate Indian tribe or Native Hawaiian organization with respect to tribal lands, if known or readily ascertainable, and, in the case of lands that have been selected by an Alaska Native Corporation or group organized pursuant to the Alaska Native Claims Settlement Act of 1971, the appropriate corporation or group. If the discovery occurred in connection with an activity, including (but not limited to) construction, mining, logging, and agriculture, the person shall cease the activity in the area of the discovery, make a reasonable effort to protect the items discovered before resuming such activity, and provide notice under this subsection. Following the notification under this subsection, and upon certification by the Secretary of the department or the head of any agency or instrumentality of the United States or the appropriate Indian tribe or Native Hawaiian organization that notification has been received, the activity may resume after 30 days of such certification.

(2) The disposition of and control over any cultural items excavated or removed under this subsection shall be determined as provided for in this section.

(3) If the Secretary of the Interior consents, the responsibilities (in whole or in part) under paragraphs (1) and (2) of the Secretary of any department (other than the Department of the Interior) or the head of any other agency or instrumentality may be delegated to the Secretary with respect to any land managed by such other Secretary or agency head.

(e) **RELINQUISHMENT.**–Nothing in this section shall prevent the governing body of an Indian tribe or Native Hawaiian organization from expressly relinquishing control over any Native American human remains, or title to or control over any funerary object, or sacred object.

**SEC. 4. ILLEGAL TRAFFICKING.**

(a) **ILLEGAL TRAFFICKING.**–Chapter 53 of title 18, United States Code, is amended by adding at the end thereof the following new section:

8100 - THE FOUNDATIONS FOR MANAGING CULTURAL RESOURCES – (Public)

**Native American Graves Protection and Repatriation Act**

**"§ 1170. Illegal Trafficking in Native American Human Remains and Cultural Items**

"(a) Whoever knowingly sells, purchases, uses for profit, or transports for sale or profit, the human remains of a Native American without the right of possession to those remains as provided in the Native American Graves Protection and Repatriation Act shall be fined in accordance with this title, or imprisoned not more than 12 months, or both, and in the case of a second or subsequent violation, be fined in accordance with this title, or imprisoned not more than 5 years, or both.

"(b) Whoever knowingly sells, purchases, uses for profit, or transports for sale or profit any Native American cultural items obtained in violation of the Native American Graves Protection and Repatriation Act shall be fined in accordance with this title, imprisoned not more than one year, or both, and in the case of a second or subsequent violation, be fined in accordance with this title, imprisoned not more than 5 years, or both."

(b) TABLE OF CONTENTS.—The table of contents for chapter 53 of title 18, United States Code, is amended by adding at the end thereof the following new item:

"1170. Illegal Trafficking in Native American Human Remains and Cultural Items."

**SEC. 5. INVENTORY FOR HUMAN REMAINS AND ASSOCIATED FUNERARY OBJECTS.**

(a) IN GENERAL.—Each Federal agency and each museum which has possession or control over holdings or collections of Native American human remains and associated funerary objects shall compile an inventory of such items and, to the extent possible based on information possessed by such museum or Federal agency, identify the geographical and cultural affiliation of such item.

(b) REQUIREMENTS.—(1) The inventories and identifications required under subsection (a) shall be—

(A) completed in consultation with tribal government and Native Hawaiian organization officials and traditional religious leaders;

(B) completed by not later than the date that is 5 years after the date of enactment of this Act, and

(C) made available both during the time they are being conducted and afterward to a review committee established under section 8.

(2) Upon request by an Indian tribe or Native Hawaiian organization which receives or should have received notice, a museum or Federal agency shall supply additional available documentation to supplement the information required by subsection (a) of this section. The term "documentation" means a summary of existing museum or Federal agency records, including inventories or catalogues, relevant studies, or other pertinent data for the limited purpose of determining the geographical origin, cultural affiliation, and basic facts surrounding acquisition and accession of Native American human remains and associated funerary objects subject to this section. Such term does not mean, and this Act shall not be construed to be an authorization for, the initiation of

8100 - THE FOUNDATIONS FOR MANAGING CULTURAL RESOURCES – (Public)

**Native American Graves Protection and Repatriation Act**

new scientific studies of such remains and associated funerary objects or other means of acquiring or preserving additional scientific information from such remains and objects.

(c) EXTENSION OF TIME FOR INVENTORY.—Any museum which has made a good faith effort to carry out an inventory and identification under this section, but which has been unable to complete the process, may appeal to the Secretary for an extension of the time requirements set forth in subsection (b)(1)(B). The Secretary may extend such time requirements for any such museum upon a finding of good faith effort. An indication of good faith shall include the development of a plan to carry out the inventory and identification process.

(d) NOTIFICATION.—(1) If the cultural affiliation of any particular Native American human remains or associated funerary objects is determined pursuant to this section, the Federal agency or museum concerned shall, not later than 6 months after the completion of the inventory, notify the affected Indian tribes or Native Hawaiian organizations.

(2) The notice required by paragraph (1) shall include information—

(A) which identifies each Native American human remains or associated funerary objects and the circumstances surrounding its acquisition;

(B) which lists the human remains or associated funerary objects that are clearly identifiable as to tribal origin; and

(C) which lists the Native American human remains and associated funerary objects that are not clearly identifiable as being culturally affiliated with that Indian tribe or Native Hawaiian organization, but which, given the totality of circumstances surrounding acquisition of the remains or objects, are determined by a reasonable belief to be remains or objects culturally affiliated with the Indian tribe or Native Hawaiian organization.

(3) A copy of each notice provided under paragraph (1) shall be sent to the Secretary who shall publish each notice in the Federal Register.

(e) INVENTORY.—For the purposes of this section, the term "inventory" means a simple itemized list that summarizes the information called for by this section.

**SEC. 6. SUMMARY FOR UNASSOCIATED FUNERARY OBJECTS, SACRED OBJECTS, AND CULTURAL PATRIMONY.**

(a) IN GENERAL.—Each Federal agency or museum which has possession or control over holdings or collections of Native American unassociated funerary objects, sacred objects, or objects of cultural patrimony shall provide a written summary of such objects based upon available information held by such agency or museum. The summary shall describe the scope of the collection, kinds of objects included, reference to geographical location, means and period of acquisition and cultural affiliation, where readily ascertainable.

(b) REQUIREMENTS.—(1) The summary required under subsection (a) shall be—

(A) in lieu of an object-by-object inventory;

(B) followed by consultation with tribal government and Native Hawaiian organization officials and traditional religious leaders; and

(C) completed by not later than the date that is 3 years after the date of enactment of this Act.

8100 - THE FOUNDATIONS FOR MANAGING CULTURAL RESOURCES – (Public)

**Native American Graves Protection and Repatriation Act**

(2) Upon request, Indian tribes and Native Hawaiian organizations shall have access to records, catalogues, relevant studies or other pertinent data for the limited purposes of determining the geographic origin, cultural affiliation, and basic facts surrounding acquisition and accession of Native American objects subject to this section. Such information shall be provided in a reasonable manner to be agreed upon by all parties.

SEC. 7. REPATRIATION.

(a) REPATRIATION OF NATIVE AMERICAN HUMAN REMAINS AND OBJECTS POSSESSED OR CONTROLLED BY FEDERAL AGENCIES AND MUSEUMS.—(1) If, pursuant to section 5, the cultural affiliation of Native American human remains and associated funerary objects with a particular Indian tribe or Native Hawaiian organization is established, then the Federal agency or museum, upon the request of a known lineal descendant of the Native American or of the tribe or organization and pursuant to subsections (b) and (e) of this section, shall expeditiously return such remains and associated funerary objects.

(2) If, pursuant to section 6, the cultural affiliation with a particular Indian tribe or Native Hawaiian organization is shown with respect to unassociated funerary objects, sacred objects or objects of cultural patrimony, then the Federal agency or museum, upon the request of the Indian tribe or Native Hawaiian organization and pursuant to subsections (b), (c) and (e) of this section, shall expeditiously return such objects.

(3) The return of cultural items covered by this Act shall be in consultation with the requesting lineal descendant or tribe or organization to determine the place and manner of delivery of such items.

(4) Where cultural affiliation of Native American human remains and funerary objects has not been established in an inventory prepared pursuant to section 5, or the summary pursuant to section 6, or where Native American human remains and funerary objects are not included upon any such inventory, then, upon request and pursuant to subsections (b) and (e) and, in the case of unassociated funerary objects, subsection (c), such Native American human remains and funerary objects shall be expeditiously returned where the requesting Indian tribe or Native Hawaiian organization can show cultural affiliation by a preponderance of the evidence based upon geographical, kinship, biological, archaeological, anthropological, linguistic, folkloric, oral traditional, historical, or other relevant information or expert opinion.

(5) Upon request and pursuant to subsections (b), (c) and (e), sacred objects and objects of cultural patrimony shall be expeditiously returned where—

(A) the requesting party is the direct lineal descendant of an individual who owned the sacred object;

(B) the requesting Indian tribe or Native Hawaiian organization can show that the object was owned or controlled by a member thereof, provided that in the case where a sacred object was owned by a member thereof, there are no identifiable tribe or organization; or

(C) the requesting Indian tribe or Native Hawaiian organization can show that the sacred object was owned or controlled by a member thereof, provided that in the case where a sacred object was owned by a member thereof, there are no

8100 - THE FOUNDATIONS FOR MANAGING CULTURAL RESOURCES – (Public)

**Native American Graves Protection and Repatriation Act**

identifiable lineal descendants of said member or the lineal descendants, upon notice, have failed to make a claim for the object under this Act.

(b) **SCIENTIFIC STUDY.**—If the lineal descendant, Indian tribe, or Native Hawaiian organization requests the return of culturally affiliated Native American cultural items, the Federal agency or museum shall expeditiously return such items unless such items are indispensable for completion of a specific scientific study, the outcome of which would be of major benefit to the United States. Such items shall be returned by no later than 90 days after the date on which the scientific study is completed.

(c) **STANDARD OF REPATRIATION.**—If a known lineal descendant or an Indian tribe or Native Hawaiian organization requests the return of Native American unassociated funerary objects, sacred objects or objects of cultural patrimony pursuant to this Act and presents evidence which, if standing alone before the introduction of evidence to the contrary, would support a finding that the Federal agency or museum did not have the right of possession, then such agency or museum shall return such objects unless it can overcome such inference and prove that it has a right of possession to the objects.

(d) **SHARING OF INFORMATION BY FEDERAL AGENCIES AND MUSEUMS.**—Any Federal agency or museum shall share what information it does possess regarding the object in question with the known lineal descendant, Indian tribe, or Native Hawaiian organization to assist in making a claim under this section.

(e) **COMPETING CLAIMS.**—Where there are multiple requests for repatriation of any cultural item and, after complying with the requirements of this Act, the Federal agency or museum cannot clearly determine which requesting party is the most appropriate claimant, the agency or museum may retain such item until the requesting parties agree upon its disposition or the dispute is otherwise resolved pursuant to the provisions of this Act or by a court of competent jurisdiction.

(f) **MUSEUM OBLIGATION.**—Any museum which repatriates any item in good faith pursuant to this Act shall not be liable for claims by an aggrieved party or for claims of breach of fiduciary duty, public trust, or violations of state law that are inconsistent with the provisions of this Act.

**SEC. 8 REVIEW COMMITTEE.**

(a) **ESTABLISHMENT.**—Within 120 days after the date of enactment of this Act, the Secretary shall establish a committee to monitor and review the implementation of the inventory and identification process and repatriation activities required under sections 5, 6 and 7.

(b) **MEMBERSHIP.**—(1) The Committee established under subsection (a) shall be composed of 7 members,

(A) 3 of whom shall be appointed by the Secretary from nominations submitted by Indian tribes, Native Hawaiian organizations, and traditional Native American religious leaders with at least 2 of such persons being traditional Indian religious leaders;

(B) 3 of whom shall be appointed by the Secretary from nominations submitted by national museum organizations and scientific organizations; and

8100 - THE FOUNDATIONS FOR MANAGING CULTURAL RESOURCES – (Public)

**Native American Graves Protection and Repatriation Act**

(C) 1 who shall be appointed by the Secretary from a list of persons developed and consented to by all of the members appointed pursuant to subparagraphs (A) and (B).

(2) The Secretary may not appoint Federal officers or employees to the committee.

(3) In the event vacancies shall occur, such vacancies shall be filled by the Secretary in the same manner as the original appointment within 90 days of the occurrence of such vacancy.

(4) Members of the committee established under subsection (a) shall serve without pay, but shall be reimbursed at a rate equal to the daily rate for GS-18 of the General Schedule for each day (including travel time) for which the member is actually engaged in committee business. Each member shall receive travel expenses, including per diem in lieu of subsistence, in accordance with sections 5702 and 5703 of title 5, United States Code.

(c) Responsibilities.—The committee established under subsection (a) shall be responsible for—

(1) designating one of the members of the committee as chairman;

(2) monitoring the inventory and identification process conducted under sections 5 and 6 to ensure a fair, objective consideration and assessment of all available relevant information and evidence;

(3) reviewing upon the request of any affected party and finding relating to

(A) the identity or cultural affiliation of cultural items, or

(B) the return of such items;

(4) facilitating the resolution of any disputes among Indian tribes, Native Hawaiian organizations, or lineal descendants and Federal agencies or museums relating to the return of such items including convening the parties to the dispute if deemed desirable;

(5) compiling an inventory of culturally unidentifiable human remains that are in the possession or control of each Federal agency and museum and recommending specific actions for developing a process for disposition of such remains;

(6) consulting with Indian tribes and Native Hawaiian organizations and museums on matters within the scope of the work of the committee affecting such tribes or organizations;

(7) consulting with the Secretary in the development of regulations to carry out this Act;

(8) performing such other related functions as the Secretary may assign to the committee; and

(9) making recommendations, if appropriate, regarding future care of cultural items which are to be repatriated.

(d) Any records and findings made by the review committee pursuant to this Act relating to the identity or cultural affiliation of any cultural items and the return of such items may be admissible in any action brought under section 15 of this Act.

(e) RECOMMENDATIONS AND REPORT.— The committee shall make the recommendations under paragraph (c)(5) in consultation with Indian tribes and Native Hawaiian organizations and appropriate scientific and museum groups.

(f) ACCESS.—The Secretary shall ensure that the committee established under

8100 - THE FOUNDATIONS FOR MANAGING CULTURAL RESOURCES – (Public)

**Native American Graves Protection and Repatriation Act**

subsection (a) and the members of the committee have reasonable access to Native American cultural items under review and to associated scientific and historical documents.

(g) DUTIES OF SECRETARY.—The Secretary shall—

- (1) establish such rules and regulations for the committee as may be necessary, and
- (2) provide reasonable administrative and staff support necessary for the deliberations of the committee.

(h) ANNUAL REPORT.—The committee established under subsection (a) shall submit an annual report to the Congress on the progress made, and any barriers encountered, in implementing this section during the previous year.

(i) TERMINATION.—The committee established under subsection (a) shall terminate at the end of the 120-day period beginning on the day the Secretary certifies, in a report submitted to Congress, that the work of the committee has been completed.

**SEC. 9. PENALTY.**

(a) PENALTY.—Any museum that fails to comply with the requirements of this Act may be assessed a civil penalty by the Secretary of the Interior pursuant to procedures established by the Secretary through regulation. A penalty assessed under this subsection shall be determined on the record after opportunity for an agency hearing. Each violation shall be a separate offense.

(b) AMOUNT OF PENALTY.—The amount of a penalty assessed under subsection (a) shall be determined under regulations promulgated pursuant to this Act, taking into account, in addition to other factors—

- (1) the archeological, historical or commercial value of the item involved;
- (2) the damages suffered, both economic and non-economic, by an aggrieved party;
- (3) the number of violations that have occurred.

(c) ACTIONS TO RECOVER PENALTIES.—If any museum fails to pay an assessment of a civil penalty pursuant to a final order of the Secretary that has been issued under subsection (a) and not appealed or after a final judgment has been rendered on an appeal of such order, the Attorney General may institute a civil action in an appropriate district court of the United States to collect the penalty. In such action, the validity and amount of such penalty shall not be subject to review.

(d) SUBPOENAS.—In hearings held pursuant to subsection (a), subpoenas may be issued for the attendance and testimony of witnesses and the production of relevant papers, books and documents. Witnesses so summoned shall be paid the same fees and mileage that are paid to witnesses in the courts of the United States.

**SEC. 10. GRANTS.**

(a) INDIAN TRIBES AND NATIVE HAWAIIAN ORGANIZATIONS.—The Secretary is authorized to make grants to Indian tribes and Native Hawaiian organizations for the purpose of assisting such tribes and organizations in the repatriation of Native American cultural items.

8100 - THE FOUNDATIONS FOR MANAGING CULTURAL RESOURCES – (Public)

**Native American Graves Protection and Repatriation Act**

(b) MUSEUMS.—The Secretary is authorized to make grants to museums for the purpose of assisting the museums in conducting the inventories and identification required under sections 5 and 6.

SEC. 11. SAVINGS PROVISIONS.

Nothing in this Act shall be construed to—

- (1) limit the authority of any Federal agency or museum to—
  - (A) return or repatriate Native American cultural items to Indian tribes, Native Hawaiian organizations, or individuals, and
  - (B) enter into any other agreement with the consent of the culturally affiliated tribe or organization as to the disposition of, or control over, items covered by this Act;
- (2) delay actions on repatriation requests that are pending on the date of enactment of this Act;
- (3) deny or otherwise affect access to any court;
- (4) limit any procedural or substantive right which may otherwise be secured to individuals or Indian tribes or Native Hawaiian organizations; or
- (5) limit the application of any State or Federal law pertaining to theft or stolen property.

SEC. 12. SPECIAL RELATIONSHIP BETWEEN THE FEDERAL GOVERNMENT AND INDIAN TRIBES.

This Act reflects the unique relationship between the Federal government and Indian tribes and Native Hawaiian organizations and should not be construed to establish a precedent with respect to any other individual, organization or foreign government.

SEC. 13. REGULATIONS.

The Secretary shall promulgate regulations to carry out this Act within 12 months of enactment.

SEC. 14. AUTHORIZATION OF APPROPRIATIONS.

There is authorized to be appropriated such sums as may be necessary to carry out this Act.

SEC. 15. ENFORCEMENT.

The United States district courts shall have jurisdiction over any action brought by any person alleging a violation of this Act and shall have the authority to issue such orders as may be necessary to enforce the provisions of this Act.

Approved November 16, 1990.

8100 - THE FOUNDATIONS FOR MANAGING CULTURAL RESOURCES – (Public)

**Excerpts from**

**THE NATIONAL TRAILS SYSTEM ACT**  
**(P.L. 90-543, as amended through P.L. 107-325, December 4, 2002)**  
**(also found in *United States Code*, Volume 16, Sections 1241-1251)**

SEC. 3. [16USC1242]

- (a) The national system of trails shall be composed of the following:

\* \* \*

(3) National historic trails, established as provided in section 5 of this Act, which will be extended trails which follow as closely as possible and practicable the original trails or routes of travel of national historic significance. Designation of such trails or routes shall be continuous, but the established or developed trail, and the acquisition thereof, need not be continuous onsite. National historic trails shall have as their purpose the identification and protection of the historic route and its historic remnants and artifacts for public use and enjoyment. Only those selected land and water based components of a historic trail which are on federally owned lands and which meet the national historic trail criteria established in this Act are included as Federal protection components of a national historic trail. The appropriate Secretary may certify other lands as protected segments of an historic trail upon application from State or local governmental agencies or private interests involved if such segments meet the national historic trail criteria established in this Act and such criteria supplementary thereto as the appropriate Secretary may prescribe, and are administered by such agencies or interests without expense to the United States.

\* \* \*

SEC. 5. [16USC1244]

- (b) The Secretary \* \* \* shall make such additional studies as are herein or may hereafter be authorized by the Congress for the purpose of determining the feasibility and desirability of designating other trails as national scenic or national historic trails. \* \* \*

(11) To qualify for designation as a national historic trail, a trail must meet all three of the following criteria:

(A) It must be a trail or route established by historic use and must be historically significant as a result of that use. The route need not currently exist as a discernible trail to qualify, but its location must be sufficiently known to permit evaluation of public recreation and historical interest potential. A designated trail should generally accurately follow the historic route, but may deviate somewhat on occasion of necessity to avoid difficult routing through subsequent development, or to provide some route variations offering a more pleasurable recreational experience. Such deviations shall be so noted on site. Trail segments no longer possible to travel by trail due to subsequent development as motorized transportation routes may be designated and marked onsite as segments which link to the historic trail.

8100 - THE FOUNDATIONS FOR MANAGING CULTURAL RESOURCES – (Public)

**Excerpts from**  
**THE NATIONAL TRAILS SYSTEM ACT**

(B) It must be of national significance with respect to any of several broad facets of American history, such as trade and commerce, exploration, migration and settlement, or military campaigns. To qualify as nationally significant, historic use of the trail must have had a far reaching effect on broad patterns of American culture. Trails significant in the history of native Americans may be included.

(C) It must have significant potential for public recreational use or historical interest based on historic interpretation and appreciation. The potential for such use is generally greater along roadless segments developed as historic trails and at historic sites associated with the trail. The presence of recreation potential not related to historic appreciation is not sufficient justification for designation under this category.

\* \* \*

(f) Within two complete fiscal years of the date of enactment of legislation designating a national historic trail or the Continental Divide National Scenic Trail or the North Country National Scenic Trail as part of the system, the responsible Secretary shall, after full consultation with affected Federal land managing agencies, the Governors of the affected States, and the relevant Advisory Council established pursuant to section 5(d) of this Act, submit to the Committee on Interior and Insular Affairs of the House of Representatives and the Committee on Energy and Natural Resources of the Senate, a comprehensive plan for the management, and use of the trail, including but not limited to, the following items:

- (1) specific objectives and practices to be observed in the management of the trail, including the identification of all significant natural, historical, and cultural resources to be preserved, details of any anticipated cooperative agreements to be consummated with State and local government agencies or private interests, and for national scenic or national historic trails an identified carrying capacity of the trail and a plan for its implementation;
- (2) the process to be followed by the appropriate Secretary to implement the marking requirements established in section 7(c) of this Act;
- (3) a protection plan for any high potential historic sites or high potential route segments \* \* \*.

\* \* \*

**DEFINITIONS**

SEC. 12. [16USC1251] As used in this Act:

(1) The term "high potential historic sites" means those historic sites related to the route, or sites in close proximity thereto, which provide opportunity to interpret the historic significance of the trail during the period of its major use. Criteria for consideration as high potential sites include historic significance, presence of visible historic remnants, scenic quality, and relative freedom from intrusion.

## Executive Order 13007

### Presidential Documents

Executive Order 13007 of May 24, 1996

#### Indian Sacred Sites

By the authority vested in me as President by the Constitution and the laws of the United States, in furtherance of Federal treaties, and in order to protect and preserve Indian religious practices, it is hereby ordered:

**Section 1. Accommodation of Sacred Sites.** (a) In managing Federal lands, each executive branch agency with statutory or administrative responsibility for the management of Federal lands shall, to the extent practicable, permitted by law, and not clearly inconsistent with essential agency functions, (1) accommodate access to and ceremonial use of Indian sacred sites by Indian religious practitioners and (2) avoid adversely affecting the physical integrity of such sacred sites. Where appropriate, agencies shall maintain the confidentiality of sacred sites.

(b) For purposes of this order:

(i) “Federal lands” means any land or interests in land owned by the United States, including leasehold interests held by the United States, except Indian trust lands;

(ii) “Indian tribe” means an Indian or Alaska Native tribe, band, nation, pueblo, village, or community that the Secretary of the Interior acknowledges to exist as an Indian tribe pursuant to Public Law No. 103-454, 108 Stat. 4791, and “Indian” refers to a member of such an Indian tribe; and

(iii) “Sacred site” means any specific, discrete, narrowly delineated location on Federal land that is identified by an Indian tribe, or Indian individual determined to be an appropriately authoritative representative of an Indian religion, as sacred by virtue of its established religious significance to, or ceremonial use by, an Indian religion; provided that the tribe or appropriately authoritative representative of an Indian religion has informed the agency of the existence of such a site.

**Sec. 2. Procedures.** (a) Each executive branch agency with statutory or administrative responsibility for the management of Federal lands shall, as appropriate, promptly implement procedures for the purposes of carrying out the provisions of section 1 of this order, including, where practicable and appropriate, procedures to ensure reasonable notice is provided of proposed actions or land management policies that may restrict future access to or ceremonial use of, or adversely affect the physical integrity of, sacred sites. In all actions pursuant to this section, agencies shall comply with the Executive memorandum of April 29, 1994, “Government-to-Government Relations with Native American Tribal Governments.”

8100 - THE FOUNDATIONS FOR MANAGING CULTURAL RESOURCES – (Public)

**Executive Order 13007**

(b) Within 1 year of the effective date of this order, the head of each executive branch agency with statutory or administrative responsibility for the management of Federal lands shall report to the President, through the Assistant to the President for Domestic Policy, on the implementation of this order. Such reports shall address, among other things, (i) any changes necessary to accommodate access to and ceremonial use of Indian sacred sites; (ii) any changes necessary to avoid adversely affecting the physical integrity of Indian sacred sites; and (iii) procedures implemented or proposed to facilitate consultation with appropriate Indian tribes and religious leaders and the expeditious resolution of disputes relating to agency action on Federal lands that may adversely affect access to, ceremonial use of, or the physical integrity of sacred sites.

**Sec. 3.** Nothing in this order shall be construed to require a taking of vested property interests. Nor shall this order be construed to impair enforceable rights to use of Federal lands that have been granted to third parties through final agency action. For purposes of this order, “agency action” has the same meaning as in the Administrative Procedure Act (5 U.S.C. 551(13)).

**Sec. 4.** This order is intended only to improve the internal management of the executive branch and is not intended to, nor does it, create any right, benefit, or trust responsibility, substantive or procedural, enforceable at law or equity by any party against the United States, its agencies, officers, or any person.

/s/ William J. Clinton

THE WHITE HOUSE,  
*May 24, 1996.*

Source: Federal Register May 29, 1996 (Volume 61, Number 104) Pages 26771 - 26772

8100 - THE FOUNDATIONS FOR MANAGING CULTURAL RESOURCES – (Public)

**Executive Order 13287**

**Presidential Documents**

**Executive Order 13287 of March 3, 2003**

**Preserve America**

By the authority vested in me as President by the Constitution and the laws of the United States of America, including the National Historic Preservation Act (16 U.S.C. 470 *et seq.*) (NHPA) and the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*), it is hereby ordered:

**Section 1. *Statement of Policy.*** It is the policy of the Federal Government to provide leadership in preserving America’s heritage by actively advancing the protection, enhancement, and contemporary use of the historic properties owned by the Federal Government, and by promoting intergovernmental cooperation and partnerships for the preservation and use of historic properties. The Federal Government shall recognize and manage the historic properties in its ownership as assets that can support department and agency missions while contributing to the vitality and economic well-being of the Nation’s communities and fostering a broader appreciation for the development of the United States and its underlying values. Where consistent with executive branch department and agency missions, governing law, applicable preservation standards, and where appropriate, executive branch departments and agencies (“agency” or “agencies”) shall advance this policy through the protection and continued use of the historic properties owned by the Federal Government, and by pursuing partnerships with State and local Governments, Indian tribes, and the private sector to promote the preservation of the unique cultural heritage of communities and of the Nation and to realize the economic benefit that these properties can provide. Agencies shall maximize efforts to integrate the policies, procedures, and practices of the NHPA and this order into their program activities in order to efficiently and effectively advance historic preservation objectives in the pursuit of their missions.

**Sec. 2. *Building Preservation Partnerships.*** When carrying out its mission activities, each agency, where consistent with its mission and governing authorities, and where appropriate, shall seek partnerships with State and local governments, Indian tribes, and the private sector to promote local economic development and vitality through the use of historic properties in a manner that contributes to the long-term preservation and productive use of those properties. Each agency shall examine its policies, procedures, and capabilities to ensure that its actions encourage, support, and foster public-private initiatives and investment in the use, reuse, and rehabilitation of historic properties, to the extent such support is not inconsistent with other provisions of law, the Secretary of the Interior’s Standards for Archeology and Historic Preservation, and essential national department and agency mission requirements.

8100 - THE FOUNDATIONS FOR MANAGING CULTURAL RESOURCES – (Public)

**Executive Order 13287**

**Sec. 3. *Improving Federal Agency Planning and Accountability.*** (a) Accurate information on the state of Federally owned historic properties is essential to achieving the goals of this order and to promoting community economic development through local partnerships. Each agency with real property management responsibilities shall prepare an assessment of the current status of its inventory of historic properties required by section 110(a)(2) of the NHPA (16 U.S.C. 470h–2(a)(2)), the general condition and management needs of such properties, and the steps underway or planned to meet those management needs. The assessment shall also include an evaluation of the suitability of the agency’s types of historic properties to contribute to community economic development initiatives, including heritage tourism, taking into account agency mission needs, public access considerations, and the long-term preservation of the historic properties. No later than September 30, 2004, each covered agency shall complete a report of the assessment and make it available to the Chairman of the Advisory Council on Historic Preservation (Council) and the Secretary of the Interior (Secretary).

(b) No later than September 30, 2004, each agency with real property management responsibilities shall review its regulations, management policies, and operating procedures for compliance with sections 110 and 111 of the NHPA (16 U.S.C. 470h–2 & 470–3) and make the results of its review available to the Council and the Secretary. If the agency determines that its regulations, management policies, and operating procedures are not in compliance with those authorities, the agency shall make amendments or revisions to bring them into compliance.

(c) Each agency with real property management responsibilities shall, by September 30, 2005, and every third year thereafter, prepare a report on its progress in identifying, protecting, and using historic properties in its ownership and make the report available to the Council and the Secretary. The Council shall incorporate this data into a report on the state of the Federal Government’s historic properties and their contribution to local economic development and submit this report to the President by February 15, 2006, and every third year thereafter.

(d) Agencies may use existing information gathering and reporting systems to fulfill the assessment and reporting requirements of subsections 3(a)–(c) of this order. To assist agencies, the Council, in consultation with the Secretary, shall, by September 30, 2003, prepare advisory guidelines for agencies to use at their discretion.

(e) No later than June 30, 2003, the head of each agency shall designate a senior policy level official to have policy oversight responsibility for the agency’s historic preservation program and notify the Council and the Secretary of the designation. This senior official shall be an assistant secretary, deputy assistant secretary, or the equivalent, as appropriate to the agency organization. This official, or a subordinate employee reporting directly to the official, shall serve as the agency’s Federal Preservation Officer in accordance with section 110(c) of the NHPA. The senior official shall ensure that the Federal Preservation Officer is qualified consistent with guidelines established by the Secretary for that position and has access to adequate expertise and support to carry out the duties of the position.

8100 - THE FOUNDATIONS FOR MANAGING CULTURAL RESOURCES – (Public)

**Executive Order 13287**

**Sec. 4. *Improving Federal Stewardship of Historic Properties.*** (a) Each agency shall ensure that the management of historic properties in its ownership is conducted in a manner that promotes the long-term preservation and use of those properties as Federal assets and, where consistent with agency missions, governing law, and the nature of the properties, contributes to the local community and its economy.

(b) Where consistent with agency missions and the Secretary of the Interior's Standards for Archeology and Historic Preservation, and where appropriate, agencies shall cooperate with communities to increase opportunities for public benefit from, and access to, Federally owned historic properties.

(c) The Council is directed to use its existing authority to encourage and accept donations of money, equipment, and other resources from public and private parties to assist other agencies in the preservation of historic properties in Federal ownership to fulfill the goals of the NHPA and this order. (d) The National Park Service, working with the Council and in consultation with other agencies, shall make available existing materials and information for education, training, and awareness of historic property stewardship to ensure that all Federal personnel have access to information and can develop the skills necessary to continue the productive use of Federally owned historic properties while meeting their stewardship responsibilities.

(d) The National Park Service, working with the Council and in consultation with other agencies, shall make available existing materials and information for education, training, and awareness of historic property stewardship to ensure that all Federal personnel have access to information and can develop the skills necessary to continue the productive use of Federally owned historic properties while meeting their stewardship responsibilities.

(e) The Council, in consultation with the National Park Service and other agencies, shall encourage and recognize exceptional achievement by such agencies in meeting the goals of the NHPA and this order. By March 31, 2004, the Council shall submit to the President and the heads of agencies recommendations to further stimulate initiative, creativity, and efficiency in the Federal stewardship of historic properties.

**Sec. 5. *Promoting Preservation Through Heritage Tourism.*** (a) To the extent permitted by law and within existing resources, the Secretary of Commerce, working with the Council and other agencies, shall assist States, Indian tribes, and local communities in promoting the use of historic properties for heritage tourism and related economic development in a manner that contributes to the long-term preservation and productive use of those properties. Such assistance shall include efforts to strengthen and improve heritage tourism activities throughout the country as they relate to Federally owned historic properties and significant natural assets on Federal lands.

(b) Where consistent with agency missions and governing law, and where appropriate, agencies shall use historic properties in their ownership in conjunction with State, tribal, and local tourism programs to foster viable economic

8100 - THE FOUNDATIONS FOR MANAGING CULTURAL RESOURCES – (Public)

**Executive Order 13287**

partnerships, including, but not limited to, cooperation and coordination with tourism officials and others with interests in the properties.

**Sec. 6. *National and Homeland Security Considerations.***

Nothing in this order shall be construed to require any agency to take any action or disclose any information that would conflict with or compromise national and homeland security goals, policies, programs, or activities.

**Sec. 7. *Definitions.*** For the purposes of this order, the term “historic property” means any prehistoric or historic district, site, building, structure, and object included on or eligible for inclusion on the National Register of Historic Places in accordance with section 301(5) of the NHPA (16 U.S.C. 470w(5)).

The term “heritage tourism” means the business and practice of attracting and accommodating visitors to a place or area based especially on the unique or special aspects of that locale’s history, landscape (including trail systems), and culture. The terms “Federally owned” and “in Federal ownership,” and similar terms, as used in this order, do not include properties acquired by agencies as a result of foreclosure or similar actions and that are held for a period of less than 5 years.

**Sec. 8. *Judicial Review.*** This order is intended only to improve the internal management of the Federal Government and it is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or equity by a party against the United States, its departments, agencies, instrumentalities or entities, its officers or employees, or any other person.

/s/ George W. Bush

THE WHITE HOUSE,  
March 3, 2003.

Source: Federal Register March 3, 2003 (Volume 68, Number 43) Pages 10635 - 10638

8100 - THE FOUNDATIONS FOR MANAGING CULTURAL RESOURCES – (Public)

**PROGRAMMATIC AGREEMENT  
AMONG  
THE BUREAU OF LAND MANAGEMENT,  
THE ADVISORY COUNCIL ON HISTORIC PRESERVATION, AND  
THE NATIONAL CONFERENCE OF STATE HISTORIC PRESERVATION OFFICERS  
REGARDING  
THE MANNER IN WHICH BLM WILL MEET ITS RESPONSIBILITIES  
UNDER THE NATIONAL HISTORIC PRESERVATION ACT**

*Preamble*

**Bureau of Land Management.** The Bureau of Land Management (BLM), consistent with its authorities and responsibilities under the Federal Land Policy and Management Act of 1976 (FLPMA), is charged with managing public lands principally located in the States of Alaska, Arizona, California, Colorado, Idaho, Montana, Nevada, New Mexico, Oregon, Utah, and Wyoming in a manner that will “protect the quality of scientific, scenic, historical, ecological, environmental, air and atmospheric, water resource, and archaeological values,” and “that will provide for outdoor recreation and human occupancy and use.”

The BLM also has specific responsibilities and authorities to consider, plan for, protect, and enhance historic properties and other cultural properties which may be affected by its actions in those and other States, including its approval for Federal mineral resource exploration and extraction, under the National Environmental Policy Act, the National Historic Preservation Act of 1966 (NHPA), the Archaeological Resources Protection Act, the Native American Graves Protection and Repatriation Act, the Historic Sites Act of 1935, the Antiquities Act, the American Indian Religious Freedom Act, the Religious Freedom Restoration Act, Executive Order 13007 (“Sacred Sites”), and related authorities.

In carrying out its responsibilities, the BLM has developed policies and procedures through its directives system (BLM Manual Sections 8100-8160) to help guide the BLM's planning and decision making as it affects historic properties and other cultural properties, and has assembled a cadre of cultural heritage specialists to advise the BLM's managers and to implement cultural heritage policies consistent with these statutory authorities.

**State Historic Preservation Officers.** State Historic Preservation Officers (SHPOs), as represented by the National Conference of State Historic Preservation Officers (NCSHPO), have responsibilities under State law as well as under Section 101(b)(3) of the National Historic Preservation Act that include to “advise and assist as appropriate, Federal and State agencies and local governments in carrying out their historic preservation responsibilities,” and to “consult with the appropriate Federal agencies in accordance with [NHPA] on Federal undertakings that may affect historic properties, and the content and sufficiency of any plans developed to protect, manage, or to reduce or mitigate harm to such properties.”

8100 - THE FOUNDATIONS FOR MANAGING CULTURAL RESOURCES – (Public)

2

In certain cases others may be authorized to act in the SHPO's place. Where the Secretary has approved an Indian tribe's preservation program pursuant to Section 101(d)(2) of the NHPA, a Tribal Preservation Officer may perform some SHPO functions with respect to tribal lands. A local historic preservation commission acting through the chief local elected official may fulfill some SHPO-delegated functions, where the Secretary has certified the local government pursuant to Section 101(c)(1) of the NHPA, and its actions apply to lands in its jurisdiction. Pursuant to the regulations implementing Section 106 of the NHPA [36 CFR 800.1(c)], the Council may at times act in lieu of the SHPO.

**Advisory Council on Historic Preservation.** The Advisory Council on Historic Preservation (Council) has the responsibility to administer the process implementing Sections 106, 110(f), and 111(a) of the National Historic Preservation Act, to comment with regard to Federal undertakings subject to review under Sections 106, 110(f) and 111(a) in accordance with its implementing regulations (36 CFR Part 800), and to “review the policies and programs of Federal agencies and recommend to such agencies methods to improve the effectiveness, coordination, and consistency of those policies and programs with the policies and programs carried out under [NHPA]” under Section 202(a)(6) of the NHPA.

The above-named parties now wish to ensure that the BLM will organize its programs to operate efficiently, effectively, according to the spirit and intent of the NHPA, and in a manner consistent with 36 CFR Part 800; and that the BLM will integrate its historic preservation planning and management decisions with other policy and program requirements to the maximum extent. The BLM, the SHPOs, and the Council desire and intend to streamline and simplify procedural requirements, to reduce unnecessary paperwork, and to emphasize the common goal of planning for and managing historic properties under the BLM's jurisdiction and control in the public interest.

***Basis for Agreement***

Proceeding from these responsibilities, goals, and objectives, the parties acknowledge the following basis for agreement:

WHEREAS the BLM's management of lands and mineral resources may affect cultural properties, many of which are historic properties as defined by the National Historic Preservation Act and are therefore subject to Sections 106, 110(f), and 111(a) of the NHPA; and

WHEREAS, among other things, the BLM's program established in response to Section 110(a)(2) and related authorities provides a systematic basis for identifying, evaluating, and nominating to the National Register historic properties under the bureau's jurisdiction or control; for managing and maintaining properties listed in or eligible for the National Register in a way that considers the preservation of their archaeological, historical, architectural, and cultural values and the avoidance of adverse effects in light of the views of

8100 - THE FOUNDATIONS FOR MANAGING CULTURAL RESOURCES - (Public)

3

local communities, Indian tribes, interested persons, and the general public; and that gives special consideration to the preservation of such values in the case of properties designated as having National significance; and

WHEREAS the BLM's program is also intended to ensure that the bureau's preservation-related activities are carried out in consultation with other Federal, State, and local agencies, Indian tribes, and the private sector; and

WHEREAS the BLM's program also has as its purpose to ensure that the bureau's procedures for compliance with Section 106 are consistent with regulations issued by the Council pursuant to Section 211 of the NHPA (36 CFR Part 800, "Protection of Historic Properties"), and provide a process for the identification and evaluation of historic properties for listing in the National Register and the development and implementation of agreements, in consultation with State Historic Preservation Officers, local governments, Indian tribes, and the interested public, as appropriate, regarding the means by which adverse effects on such properties will be considered; and

WHEREAS the BLM's program also intends to ensure that its Section 106 procedures recognize the historic and traditional interests of Indian tribes and other Native American groups in lands and resources potentially affected by BLM decisions, affording tribes and other groups adequate participation in the decisionmaking process in accordance with Sections 101(d)(6), 110(a)(2)(D), and 110(a)(2)(E)(ii) of the NHPA, and provide for the disposition of Native American cultural items from Federal or tribal land in a manner consistent with Section 3(c) of the Native American Graves Protection and Repatriation Act, in accordance with Section 110(a)(2)(E)(iii) of the NHPA; and

WHEREAS this agreement will not apply to tribal lands, but rather, a proposed BLM undertaking on tribal lands will require consultation among the BLM, the Tribal Preservation Officer, and the Council; or among BLM, tribal officials (where no Tribal Preservation Program exists) the SHPO, and the Council; and such consultation will be outside the compass of this agreement and will follow 36 CFR Part 800 or the Indian tribe's alternative to 36 CFR Part 800; and

WHEREAS the BLM's program, the elements of which were defined in the BLM Manual between 1988 and 1994, does not incorporate some recent changes in legal, regulatory, and Executive Order authorities and recent changes in the nature and direction of historic preservation relationships, rendering the program directives in need of updating, and this need is recognized by the BLM, the Council, and the NCSHPO as an opportunity to work jointly and cooperatively among themselves and with other parties, as appropriate, to enhance the BLM's historic preservation program; and

WHEREAS the States, particularly those containing a high percentage of public land under the BLM's jurisdiction and control, have a strong incentive in forming a cooperative relationship with the BLM to facilitate and promote activities of mutual interest, including

8100 - THE FOUNDATIONS FOR MANAGING CULTURAL RESOURCES - (Public)

4

direction and conduct of a comprehensive statewide survey and inventory of historic properties, identification and nomination of eligible properties to the National Register of Historic Places, preparation and implementation of comprehensive historic preservation plans, and development and dissemination of public information, education and training, and technical assistance in historic preservation, and

WHEREAS the parties intend that efficiencies in the Section 106 process, realized through this agreement, will enable BLM, SHPO, and Council staffs to devote a larger percentage of their time and energies to proactive work, including analysis and synthesis of data accumulated through decades of Section 106 compliance; historic property identification where information is needed, not just in reaction to proposed undertakings; long-term preservation planning; purposeful National Register nomination; planning- and priority-based historic resource protection; creative public education and interpretation; more efficient BLM, SHPO, and Council coordination, including program monitoring and dispute resolution; and other activities that will contribute to readily recognizable public benefits and to an expanded view of the Section 106 context, and

WHEREAS the BLM has consulted with the Advisory Council on Historic Preservation (Council) and the National Conference of State Historic Preservation Officers (NCSHPO) regarding ways to ensure that BLM's planning and management shall be more fully integrated and consistent with the above authorities, requirements, and objectives;

NOW, THEREFORE, the BLM, the Council, and the NCSHPO mutually agree that the BLM, after completing the actions summarized in 1. below, will meet its responsibilities under Section 106, 110(f), and 111(a) through the implementation of the mechanisms agreed to in this agreement rather than by following the procedure set forth in the Council's regulations (36 CFR Part 800), and the BLM will integrate the manner in which it meets its historic preservation responsibilities as fully as possible with its other responsibilities for land-use planning and resource management under FLPMA, other statutory authorities, and executive orders and policies.

### *Components Of Agreement*

#### **1. Applicability**

The Council's regulations (36 CFR Part 800) and existing State programmatic agreements will continue to apply to BLM undertakings under a State Director's jurisdiction until the Director and State Directors, with the advice of the Preservation Board, assisted by the Council, the NCSHPO, the SHPOS, and other participating parties, as appropriate, have updated and revised national BLM policies and procedures; developed State-specific BLM/SHPO operating protocols; and trained all field managers and their cultural heritage staffs in the operation of the policies, procedures, and protocols. Field offices under a State Director's jurisdiction

8100 - THE FOUNDATIONS FOR MANAGING CULTURAL RESOURCES - (Public)

5

(including those under the jurisdiction of the Eastern States Director) will not begin to employ the streamlined procedures developed pursuant to this agreement until the Director has certified that the State Director's organization is appropriately qualified to do so.

## **2. Establishment of Preservation Board**

a. The BLM's Director will establish a Preservation Board to advise the Director, Assistant Directors, State Directors, and field-office managers in the development and implementation of BLM's policies and procedures for historic properties. Authority, responsibilities, and operating procedures for the Preservation Board will be specified in the BLM Manual.

b. The Preservation Board will be chaired by the BLM's Preservation Officer designated under Section 110(c) of the NHPA, and will include a professionally qualified Deputy Preservation Officer from each State Office. The field management organization will be represented by at least three line managers (i.e., officials who are authorized by the Director's or State Directors' delegation to make land-use decisions).

c. The Preservation Board will perform primary staff work and make recommendations to the Director and State Directors concerning policies and procedures (3. below); bureauwide program consistency (3. below); training (6. below); certification and decertification of field offices (8. below); monitoring of field offices' historic preservation programs (9. below); and responses to public inquiries (9. below).

d. In addition, the Preservation Board will confer regularly with the Council and NCSHPO and involve them in its activities, as appropriate, including the development of the items listed in 2.c. The Preservation Board will also confer regularly with individual SHPOs and such other parties as have identified themselves to the Board as interested parties, including Tribal Preservation Officers, local governments, and preservation associations, to promote consistency with State, regional, and national practice, to identify recurrent problems or concerns, and to create opportunities in general to advance the purposes of this agreement.

e. The BLM will provide assistance, where feasible and appropriate, with reasonable and prudent expenses of the Council related to its activities pursuant to 2.c. and 2.d. above.

## **3. Revision of "Cultural Resource Management" Procedures**

a. Within 6 months from the date of its establishment under 2. above, the Preservation Board will provide notice to Indian tribes and the public and, in accordance with 2.c. above, will begin to review, update, revise, adapt, and augment the various relevant sections of its Manual (8100 Series). These are:

8100 - THE FOUNDATIONS FOR MANAGING CULTURAL RESOURCES - (Public)

6

8100 - "Cultural Resource Management";  
8110 - "Cultural Resource Identification";  
8111 - "Cultural Resource Inventory and Evaluation";  
8130 - "Cultural Resource Planning";  
8131 - "Cultural Resource Management Plans";  
8132 - "Cultural Resource Project Plans";  
8140 - "Cultural Resource Protection";  
8141 - "Physical and Administrative Protection";  
8142 - "Recovery of Cultural Resource Data";  
8143 - "Avoidance and/or Mitigation of Adverse Effects to Cultural Properties";  
8150 - "Cultural Resource Utilization";  
8151 - "Cultural Resource Use Permits";  
8160 - "Native American Coordination and Consultation"; and  
H-8160-1 - "General Procedural Guidance for Native American Consultation."

b. Manuals will be revised in consultation with the Council, NCSHPO, and the SHPOs, and will consider the views of other interested parties who have identified themselves in response to 2.d. (above).

c. Procedures will be revised to be consistent with the purposes of (1) this agreement, (2) the principles and standards contained in the Council's regulations, "Protection of Historic Properties" (36 CFR Part 800); (3) the Secretary of the Interior's *Standards and Guidelines for Archeology and Historic Preservation* regarding identification, evaluation, registration, and treatment, (4) the Office of Personnel Management's classification and qualification standards as revised under Section 112 of the NHPA, and (5) other applicable standards and guidelines, and will include time frames and other administrative details for actions referred to in this agreement.

d. The BLM will ensure adequate public participation and consultation with parties outside the BLM when revising policy and procedures under 3.a. The BLM's procedures for implementing the National Environmental Policy Act (NEPA) will be used as appropriate for ensuring adequate public participation in the BLM's historic preservation decision making. Provisions of Section 110 of the NHPA and the Council's regulations will be the basis for tailoring the NEPA procedures to historic preservation needs. Mechanisms for continuing public involvement in BLM's historic preservation process will be incorporated in BLM/SHPO protocols under 5. below.

e. The BLM will provide Indian tribes and other Native American groups with appropriate opportunities for involvement. Consultation with tribes pursuant to Sections 101(d)(6) and 110(a)(2)(E) of the NHPA will follow government-to-government conventions. Procedures to ensure timely and adequate Native American participation will follow the direction in Sections 101(d)(6) and 110(a)(2)(E) of the NHPA, and BLM Manual Section 8160 and Manual Handbook H-8160-1, as revised pursuant to a. and b. above. Revisions to the 8160 Manual Section and Manual Handbook will treat the cited NHPA direction as the

8100 - THE FOUNDATIONS FOR MANAGING CULTURAL RESOURCES - (Public)

7

minimum standard for Indian tribes' and other Native American groups' opportunities to be involved. Provisions for Native American participation in BLM's procedures for historic property identification, evaluation, and consideration of adverse effects will be incorporated in BLM/SHPO protocols under 5. below. For Indian tribes with historic preservation programs approved by the Secretary under Section 101(d)(2) of the NHPA, Tribal Preservation Officers will be involved in place of SHPOs when tribal land would be affected. Such involvement will occur under the Council's and/or the Tribe's procedures in all cases, not under this programmatic agreement.

f. It will be the Preservation Board's duty in accordance with 3.b. above to ensure that the policies and procedures, as revised pursuant to this section, are being followed appropriately by field offices. Where problems with implementation are found, it will be the Preservation Board's duty to move promptly toward effecting correction of the problems. This responsibility of the Preservation Board, among others, will be spelled out in the BLM Manual under 2.a. above.

#### **4. Thresholds for Council Review**

- a. The BLM procedures will identify circumstances calling for the Council's review.
- b. At a minimum, the BLM will request the Council's review in the following classes of undertakings:
  - (1) nonroutine interstate and/or interagency projects or programs;
  - (2) undertakings directly and adversely affecting National Historic Landmarks or National Register eligible properties of national significance;
  - (3) highly controversial undertakings, when Council review is requested by the BLM, an SHPO, an Indian tribe, a local government, or an applicant for a BLM authorization.

#### **5. Cooperation and Enhanced Communication**

a. Immediately following execution of this agreement, the BLM will offer each affected SHPO and the Council (and others who have identified concerns under 2.d. above) the following information, and will provide or update as needed:

- a reference copy of the existing BLM Manual Sections and Manual Handbooks related to “Cultural Resource Management;

8100 - THE FOUNDATIONS FOR MANAGING CULTURAL RESOURCES - (Public)

8

- a copy of any Handbook, Manual Supplement, or other standard procedure for “Cultural Resource Management” used by the BLM within an individual State Office's jurisdiction
- a list of Preservation Board members;
- a list of BLM cultural heritage personnel within each State Office's jurisdiction;
- a map of the State showing BLM field office boundaries and responsibilities;
- the best available map of the State showing tribal lands, ceded lands, and ancestral use areas; and
- a brief summary of land holdings, major ongoing development projects or permitted uses, proposed major undertakings such as land exchanges or withdrawals, and particularly significant historic properties on BLM lands within each State Office's jurisdiction.

b. Within 6 months after revised policies and procedures become available, each State Director will meet with each pertinent SHPO to develop a protocol specifying how they will operate and interact under this agreement. Where a State Director has few interactions with an SHPO due to minimal public land holdings, protocols need not be pursued and historic preservation consideration will continue to be carried out under the procedures of 36 CFR Part 800. Adoption of protocols, as formalized by the State Director's and SHPO's signatures, will be a prerequisite for the certification described in 8. The Preservation Board and the Council will be kept informed of the progress of protocol development, and will receive an information copy of any signed BLM/SHPO protocol. The SHPO and State Director may ask the NCSHPO, the Preservation Board, and the Council to assist at any stage in developing protocols.

At a minimum, protocols will address the following:

- the manner in which the State Director will ensure the SHPO's involvement in the BLM State management process;
- data sharing, including information resource management development and support
- data synthesis, including geographical and/or topical priorities for reducing the backlog of unsynthesized site location and report information, and data quality improvement;
- public education and community involvement in preservation;
- preservation planning;
- cooperative stewardship;
- agreement as to types of undertakings and classes of affected properties that will trigger case-by-case review (case-by-case review will be limited to undertakings that BLM finds will affect historic properties; the parties to this agreement agree that such case-by-case review will be minimized);
- BLM/SHPO approaches to undertakings involving classes of, or individual examples of, historic properties for which the present BLM staff lacks specialized capabilities;
- provisions for resolving disagreements and amending or terminating the protocol; and
- relationship of the protocol to 36 CFR Part 800.

8100 - THE FOUNDATIONS FOR MANAGING CULTURAL RESOURCES - (Public)

9

c. As agreed under the protocol, but at least annually, the BLM will regularly send to the SHPO copies of forms and reports pertaining to historic properties, in a format appropriate to the SHPO's established recording systems, and consistent with the confidentiality provisions of Section 304 of the NHPA, so that information can be shared to the maximum extent and contribute to State inventories and comprehensive plans as well as to BLM land use and resource management planning.

d. The State Director, with the assistance of the Preservation Board, will seek, as appropriate, the SHPO's active participation in the BLM's land-use planning and associated resource management activities so that historic preservation considerations can have a greater influence on large scale decisions and the cumulative effects of the more routine decisions, before key BLM commitments have been made and protection options have been limited. Where SHPO participation will be extensive, State Directors may provide funding, if available.

e. Relevant streamlining provisions of BLM Statewide programmatic agreements currently in force in Arizona, California, Colorado, Nevada, New Mexico, and Wyoming (and other programmatic agreements and/or formalized working arrangements between BLM and SHPOs in any State, relative to identifying undertakings, identifying properties, evaluating properties, determining effects, and protecting historic properties) may be incorporated in BLM/SHPO protocols as appropriate and as consistent with 5.b. above, after which the State Directors will notify the SHPO and Council that the Statewide agreements may be suspended for so long as this agreement remains in effect. Project and special purpose programmatic agreements will function normally according to their terms.

f. When potentially relevant to the purposes and terms of this agreement, the BLM will forward to the Council information concerning the following, early enough to allow for timely briefing and consultation at the Council's election:

- major policy initiatives;
- prospects for regulations;
- proposals for organizational change potentially affecting relationships addressed in this agreement;
- the Administration's budget proposals for BLM historic preservation activities;
- training schedules; and
- long-range planning and regional planning schedules.

## **6. Training Program**

In cooperation with the Council and the NCSHPO, and with the active participation of individual SHPOs, the Preservation Board will develop and implement a training program to (a) instruct BLM line managers and cultural heritage program personnel on the policies underlying and embodied in this agreement, as well as specific measures that must be met

8100 - THE FOUNDATIONS FOR MANAGING CULTURAL RESOURCES - (Public)

10

prior to its implementation, and (b) enhance skills and knowledge of other BLM personnel involved with “Cultural Resource Management” activities, including land use planning and resource management staffs. Training sessions will be open to Indian tribes, cultural resource consultants, and other parties who may be involved in the implementation of this agreement. The BLM may, where feasible and appropriate, reimburse the Council for assistance in developing training programs.

### **7. Professional Development**

a. The Preservation Board, in consultation with the supervising line manager and cultural heritage specialist, will document each specialist's individual attainments as a preservation professional, consistent with OPM guidance and Section 112 of the NHPA and giving full value to on-the-job experience. Documentation will include any recommended limitations on the nature and extent of authorized functions. Where a field office manager's immediate staff does not possess the necessary qualifications to perform specialized preservation functions (e.g., historical architecture), the documentation will identify available sources of specialized expertise from outside the immediate staff, such as from other BLM offices, the SHPO, other Federal agencies, or non-governmental sources.

b. The Preservation Board, the supervising line manager, and the cultural heritage specialist will assess the manager's needs for special skills not presently available on the immediate staff, and the specialist's opportunities for professional development and career enhancement through training, details, part-time graduate education, and other means.

### **8. State Office Certification and Decertification**

a. The Preservation Board, in consultation with the appropriate SHPO and the Council, will certify each BLM State Office to operate under this agreement upon determining that (1) managers and specialists have completed the training referred to in 7. above, (2) professional capability to carry out these policies and procedures is available through each field office's immediate staff or through other means, (3) each supervising line manager within the State has assigned and delimited cultural heritage specialists' duties, and (4) the State Director and the SHPO have signed a protocol outlining BLM/SHPO interaction in accordance with 5. above.

b. The Preservation Board may choose to review a field office's certification status. The field office's manager, the State Director, the Council, or the SHPO may request that the Preservation Board initiate a review, in which case the Preservation Board will respond as quickly as possible. If a field office is found not to have maintained the basis for its certification (e.g. the professional capability needed to carry out these policies and procedures is no longer available, or the office is not in conformance with the BLM/SHPO protocol, the procedures developed under 3. above, or this agreement) and the office's manager has not

8100 - THE FOUNDATIONS FOR MANAGING CULTURAL RESOURCES – (Public)

11

voluntarily suspended participation under this agreement, the Preservation Board will recommend that the State Director decertify the field office. If a suspended or decertified field office is found to have restored the basis for certification, the Preservation Board will recommend that the State Director recertify the office.

c. A State Director may ask the Director to review the Preservation Board's decertification recommendation, in which case the Director will request the Council's participation in the review.

d. The Preservation Board will notify the appropriate SHPO(s) and the Council if the status of a certified office changes.

e. When a field office is suspended or decertified, the responsible manager will follow the procedures of 36 CFR Part 800 to comply with Section 106.

## **9. Accountability Measures**

a. Each State Director will prepare an annual report in consultation with the appropriate SHPO(s), outlining the preservation activities conducted under this agreement. The annual report's content will be specified in the revised Manual. The report will be provided to the Council and made available to the public.

b. Once each year, the Council, in consultation with the BLM, SHPOS, and interested parties, and with assistance from the BLM, may select a certified State or States, or field offices within a State, for a detailed field review limited to the implementation of this agreement. Selecting parties may consider including other legitimate affected parties as participants in the review, as appropriate. The Preservation Officer and the appropriate Deputy Preservation Officer(s) and SHPO(s) will participate in the review. Findings and recommendations based on this field review will be provided to the Director, the State Director, and the Preservation Board for appropriate action.

c. The Preservation Officer and Deputy Preservation Officers will prepare responses to public inquiries for the Director's or a State Director's signature. This applies only to inquiries about the BLM's exercise of its authorities and responsibilities under this agreement, such as the identification, evaluation, and protection of resources, and not to general inquiries. Preparing responses will include establishing the facts of the situation and, where needed, recommending that the Director or State Director prescribe corrections or revisions in a practice or procedure.

d. Each meeting of the Preservation Board will be documented by a report. The Preservation Board will provide a copy of each report to the Council, the NCSHPO, and participating SHPOs.

8100 - THE FOUNDATIONS FOR MANAGING CULTURAL RESOURCES - (Public)

12

**10. Reviewing and Changing the Agreement**

a. The parties to this agreement may agree to revise or amend it at any time. Changes that would affect the opportunity for public participation or Native American consultation will be subject to notice and consultation, consistent with 3.e. above.

b. Should any party to this agreement object to any matter related to its implementation, the parties will meet to resolve the objection.

c. Any party to this agreement may terminate it by providing 90 days notice to the other parties, provided that the parties will meet during the period prior to termination to seek agreement on amendments or other actions that would avoid termination. In the event of termination, the BLM will comply with 36 CFR Part 800, including any relevant suspended State programmatic agreements (see 5.e. above).

d. Not later than the third quarter of FY 1999, and every two years thereafter, the parties to this agreement will meet to review its implementation.

***Affirmation***

The signatures below represent the affirmation of the Bureau of Land Management, the Advisory Council on Historic Preservation, and the National Conference of State Historic Preservation Officers that successful execution of the components of this agreement will satisfy the BLM's obligations under Sections 106, 110(f), and 111(a) of the National Historic Preservation Act.

/s/ Sylvia V. Baca

3/26/97

\_\_\_\_\_  
Director, Bureau of Land Management

\_\_\_\_\_  
Date

/s/ Cathryn B. Slater

March 26, 1997

\_\_\_\_\_  
Chairman, Advisory Council on Historic Preservation

\_\_\_\_\_  
Date

/s/ Judith E. Bittner

Mar 26, 1997

\_\_\_\_\_  
President, National Conference of State Historic  
Preservation Officers

\_\_\_\_\_  
Date

8100 - THE FOUNDATIONS FOR MANAGING CULTURAL RESOURCES – (Public)

**BUREAU OF LAND MANAGEMENT**

**CHARTER FOR THE  
PRESERVATION BOARD**

The Preservation Board is established to assist the Directorate, the State Directors, and Field Office managers in meeting their responsibilities under the National Historic Preservation Act. The Board serves in a professional staff function, assuring that Bureauwide quality standards are observed and maintained, and recommending adjustments in policy, procedures, and practice when needed. The Board coordinates with the Advisory Council on Historic Preservation (Council), the National Conference of State Historic Preservation Officers (NCSHPO), and individual State Historic Preservation Officers (SHPO), and responds to inquiries from the public, according to provisions of the National Programmatic Agreement, dated March 26, 1997, executed by the Director, the Chairman of the Council, and the President of the National Conference of SHPO's.

This Charter will be reviewed during the third quarter 1999, in conjunction with the scheduled review of the National Programmatic Agreement's implementation, and afterward will continue to be reviewed on the same schedule as reviews of the National Programmatic Agreement.

**I. Membership**

A. Ex officio members:

1. The BLM's Preservation Officer, designated under Section 110(c) of the National Historic Preservation Act (Chair)
2. A professionally qualified Deputy Preservation Officer representing each State Director (State Office Cultural Heritage Program Lead)

B. Rotating-term members, recommended by the Board and appointed by the Director:

1. An Associate State Director (two-year term)
2. Two Field Office managers (two-year term)
3. A Field Office Cultural Heritage staff specialist (one-year term)
4. Additional line or staff manager(s) as appropriate (two-year term)

**II. Roles**

The Preservation Board's roles are:

- To perform primary staff work and make recommendations to the Director and State Directors concerning –
- historic preservation policy and procedures
  - bureauwide program consistency
  - training

8100 - THE FOUNDATIONS FOR MANAGING CULTURAL RESOURCES – (Public)

- certification and decertification of Field Offices
- monitoring of Field Offices' historic preservation activities, and
- responses to public inquiries;

To confer regularly with the NCSHPO and the Council and with parties who have identified themselves to the Board as interested parties, including SHPO's, Tribal Preservation Officers (TPO's), trade and professional associations, and authorized users of the public lands –

- to promote consistency with State, regional, and national historic preservation practice, and
- to identify recurrent problems or concerns.

### **III. Scope and Responsibilities**

The scope of the Preservation Board's staff and advisory functions is consistent with the scope of responsibilities that come to the Director (as “head of [a] Federal agency”) under the National Historic Preservation Act, whether those responsibilities are met at Field Office, State, inter-State, or Bureauwide levels. Where they bear on the BLM's capability to meet the Director's legal responsibilities, funding, staffing, and other budgetary aspects of program management may be included in the Board's advisory scope.

#### **A. Bureauwide Historic Preservation Policy and Procedures**

The Preservation Board will review and make recommendations to the Directorate on Manual Sections, Manual Handbooks, and temporary directives addressing historic preservation.

#### **B. Bureauwide Historic Preservation Practice**

The Preservation Board will monitor Field Office performance under Bureauwide historic preservation policy and procedures and State-level protocols developed with SHPO's, and will recommend adjustments where needed to correct problems.

### **IV. Board Support and Ad-hoc Board Assignments**

The Preservation Board may call on the host office for space, normally available equipment, and clerical or other staff support needed to facilitate its meetings. The Cultural Heritage, Wilderness, Special Areas and Paleontology Group in the Washington Office will maintain file copies of Board reports and recommendations.

The Preservation Board may identify special ad-hoc advisors or advisory teams to provide technical support, subject to assignment by the responsible manager(s).



8100 - THE FOUNDATIONS FOR MANAGING CULTURAL RESOURCES – (Public)

**BUREAU OF LAND MANAGEMENT**

**CHARTER FOR THE  
PRESERVATION BOARD**

**REVISION**

The following changes revise the Preservation Board charter of October 1, 1997.

**From Section I, Membership, remove the existing paragraph B:**

B. Rotating-term members, recommended by the Board and appointed by the Director:

1. An Associate State Director (two-year term)
2. Two Field Office managers (two-year term)
3. A Field Office Cultural Heritage staff specialist (one-year term)
4. Additional line or staff manager(s) as appropriate (two-year term)

**and replace with a new paragraph B:**

B. Rotating-term members with overlapping terms of 2 years each, recommended by the Board and appointed by the Director:

1. Four line managers representing the tiers of the Field organization
2. Two Field Office cultural heritage staff specialists

Recommended:

/s/ John G Douglas

11/15/99

\_\_\_\_\_  
Preservation Officer on behalf of the  
Preservation Board

\_\_\_\_\_  
Date

Approved:

/s/ Tom Fry

12/1/99

\_\_\_\_\_  
Director

\_\_\_\_\_  
Date

8100 - THE FOUNDATIONS FOR MANAGING CULTURAL RESOURCES – (Public)

**Council Letter With Transition Questions and Answers**

**Advisory  
Council On  
Historic  
Preservation**

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The Old Post Office Building  
1100 Pennsylvania Avenue, NW, #809  
Washington, DC 20004

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May 24, 1999

Dear Preservation Partner:

The Council is pleased to convey a copy of the revised 36 CFR Part 800, "Protection of Historic Properties." Published in the *Federal Register* May 18, 1999, at 64 F.R. 27043-27084, they go into effect June 17, 1999. The document also includes the Council's "Recommended Approach for Recovery of Significant Information From Archaeological Sites" (pp. 27085-27087).

The new regulations significantly modify the Section 106 review process, introducing new streamlining while incorporating changes mandated by the 1992 amendments to NHPA. They give greater deference to decisions made by Federal agencies and SHPOs; focus Council actions on larger issues such as monitoring Federal preservation program trends and overall performance; define and strengthen the roles of Indian tribes and other Native Americans; recognize the role of applicants; and encourage early compliance.

The rule also encourages Federal agencies to integrate Section 106 review with reviews required under the National Environmental Policy Act and other laws. Specific provisions now allow agencies to use information and analyses prepared for one law to meet the requirements of another. Revisions and refinements throughout the regulations cumulatively improve the operation of the Section 106 review process.

In addition to the rule itself, the materials in this package include an overview of significant changes, a flow chart of the new process, procedural Q&As, and information about transitional briefings. Additional materials will be posted on our Web site [www.achp.gov](http://www.achp.gov) as they become available.

Thank you for your support throughout the process of regulatory revision. With your help, we now have a more effective and efficient Section 106 review process.

Sincerely,



John M. Fowler  
Executive Director

Enclosures

## Transition Questions and Answers

**Revised Section  
106 Regulations**

Effective June 17, 1999

Major Changes

Full Text of the  
Revised Regulations

Regs Flow Chart

Flow Chart  
Explanatory Material

Archeology  
Guidance

Transition Questions  
and Answers

Briefings Schedule

# ACHP 106

## Making the Transition to the Council's Revised Regulations: Questions and Answers

### Introduction

**1. Are existing Memoranda of Agreement and Programmatic Agreements still valid?**

**2. What interpretation applies to provisions of MOAs/PAs executed before the effective date of the new regulations that refer to the former regulations by section numbers?**

**3. How are existing MOAs/PAs to be interpreted that do not specifically refer to a section of the former regulations but refer instead to the Council's regulations in a general manner?**

**4. Under what regulations must cases in progress be handled?**

**5. How are MOAs prepared under the former regulations to be executed when they are received by the Council after the new regulations go into effect?**

**6. If it is decided that the former regulations are to be used for one purpose under an MOA/PA, is use of the revised regulations precluded for another purpose in the same MOA/PA?**

**7. To what address must case materials be sent?**

### Summary

### **Introduction**

The Advisory Council on Historic Preservation has revised the regulations that implement Section 106 of the National Historic Preservation Act. Published in the *Federal Register* (64 FR 27043-27084) on May 18, 1999, the revised regulations go into effect June 17, 1999. This briefing sheet addresses questions that are expected to arise during the transition from the former regulations to the revised ones.

The revisions are the culmination of careful Council review of the Section 106 process, which was last amended in 1986. This review reaffirmed the basic tenets of the Section 106 process, while

8100 - THE FOUNDATIONS FOR MANAGING CULTURAL RESOURCES – (Public)

**Transition Questions and Answers**

introducing new flexibility and options for agencies to meet their legal obligations. The process continues to focus on constructive resolution of potential conflicts between a Federal undertaking and historic properties through consultation and agreement among the agency, the State or Tribal Historic Preservation Officer (SHPO/THPO), and the Council.

**1. Are existing Memoranda of Agreement and Programmatic Agreements still valid?**

Yes. Memoranda of Agreement (MOAs) and Programmatic Agreements (PAs) executed under the former regulations are still valid. The revised regulations contain changes to the process by which agreements will be developed and executed after June 17, 1999.

**2. What interpretation applies to provisions in Memoranda of Agreement and Programmatic Agreements executed before the effective date of the new regulations that refer to the former regulations by section numbers?**

When the parties to existing MOAs and PAs entered into those agreements, the former regulations were in place. By referring to sections of those regulations, the signatories expressed their intent to be bound by the terms of the regulations existing at the time the agreements were executed.

Unless a particular MOA or PA expressly states that the most current version of the regulations is to apply, each MOA or PA must be interpreted under the version of the regulations that was current at the time the agreement was executed. If an MOA or PA states that the most current version of the regulations is to govern the agreement's terms, then the revised regulations should be used. Few, if any, agreements contain such a provision.

Under both the former and the revised regulations and under most MOAs and PAs, signatories are entitled to seek amendment to the agreement. Thus, if a signatory is unhappy with a reference to a section of the former regulations or its interpretation, that party would be free to seek amendment to bring the MOA or the PA under the revised regulations.

However, except in a highly unusual situation, it is anticipated that amendments will be pursuant to the revised regulations. In addition, all the signatories to the original document must agree to the amendment.

### **Transition Questions and Answers**

#### **3. How are existing MOAs and PAs to be interpreted that do not specifically refer to a section of the former regulations but refer instead to the Council's regulations in a general manner?**

By including in the Memoranda of Agreement a general reference to the Council's regulations rather than a specific reference, the parties agreed to a general process and not to specific steps as might be contained in a particular section or subsection of the former regulations.

This sort of general reference is often seen in stipulations in MOAs that require the agency to seek the comments of the Council under 36 CFR Part 800 if the provisions of the MOA cannot be met. Although it could be shown that the parties intended the processes contained in the former regulations to apply, it is more reasonable to assume that the most current process is applicable. Therefore, new consultation required by such general references, including that occurring in the context of an MOA, should be conducted under the revised regulations.

Again, parties may seek amendment of MOAs or PAs to clarify any ambiguities.

#### **4. Under what regulations must cases in progress be handled?**

Even if an agency has initiated the Section 106 process prior to June 17, 1999, the revised regulations should be applied unless circumstances strongly warrant completing the process under the former regulations. This approach should not cause delay in completing the Section 106 process.

Generally, regarding cases in progress when the revised regulations go into effect, it will be assumed that the revised regulations apply unless the consulting parties agree to the contrary. The parties should consider the following factors in deciding which regulations to use to complete the process:

- How long ago did the agency initiate the process? If the process was initiated so long ago that the agency might have reasonably expected that the former regulations would apply, it might make sense to continue to apply those regulations.
- How far into the process is the case? If a case has been nearly completed under the former regulations, it might be

8100 - THE FOUNDATIONS FOR MANAGING CULTURAL RESOURCES – (Public)

**Transition Questions and Answers**

more expedient to complete the process under the former regulations. If the process has only begun, the revised regulations should be applied.

- Will continued application of the former regulations create any delay, expense, or hardship? If so, it is more reasonable to apply the revised regulations.
- Will continuing to use the former regulations deprive any party (e.g. THPO, other tribes, applicants, local governments) or the public of an opportunity to participate? If so, the revised regulations should apply.

If the Agency Official, SHPO, and Council cannot agree, then the revised regulations should apply.

**5. How are Memoranda of Agreement prepared under the former regulations to be executed when they are received by the Council after June 17, 1999?**

When agreements that have been prepared under the former regulations come to the Council for consideration and signature, the Council will assume that the revised regulations apply to its own actions with regard to those agreements. The Council will treat them as MOAs under §800.6(b)(2) of the revised regulations, requiring the Council's signature.

Although the appropriate documentation required by the revised regulations should be submitted, the Council will apply the documentation requirements flexibly when, in its estimation, circumstances so warrant.

**6. If it is decided that the former regulations are to be used for one purpose under an MOA or a PA, is use of the revised regulations precluded for another purpose in the same MOA or PA?**

Although it is preferable to apply only one set of regulations to any given MOA or PA, there may be circumstances in which it would be more reasonable to apply both the former and the revised regulations for different purposes. For example, when an existing MOA or PA refers to a specific section of the former regulations and it is clear that the parties intended the particular terms of that section to apply, then the specified section of the former regulations may be used.

8100 - THE FOUNDATIONS FOR MANAGING CULTURAL RESOURCES - (Public)

**Transition Questions and Answers**

The same MOA or PA may also require the parties to seek Council comment when the terms of the agreement cannot be met. For this second reference, the revised regulations would apply. (See answer to question #3.)

**7. To what address must case materials be sent?**

All case materials developed under the regulations should be sent to the Director, Office of Planning and Review. Materials for cases originating in localities east of the Mississippi River, as well as in Minnesota, Iowa, and Missouri, should be sent to ACHP, 1100 Pennsylvania Ave., NW, Suite 809, Washington, DC 20004. Materials for cases originating west of the Mississippi River (exclusive of Minnesota, Iowa, and Missouri) should be sent to ACHP, 12136 W. Bayaud Ave., Suite 330, Lakewood, CO 80228.

**Summary**

Specific references to sections of the former regulations in existing agreements should be interpreted under the version of the regulations that existed at the time the agreement was executed, unless the MOA or PA contains a provision to the contrary or the signatories agree that the MOA or PA should be interpreted under the revised regulations. General references to the Council's regulations in existing MOAs or PAs should be interpreted as references to the revised regulations unless the MOA clearly indicates otherwise.

Cases in progress generally should follow the revised regulations. However, the consulting parties, who began consultation before the effective date of the new regulations, and having considered all pertinent factors, may agree to complete the process under the former regulations. Such agreement should be in writing and should state the reasons for the decision.

The Council staff is available to answer any questions and provide guidance on application of the regulations in specific circumstances. For questions related to the regulations, call (202) 606-8508, or e-mail [regs@achp.gov](mailto:regs@achp.gov).

Source: <http://www.achp.gov/regsqa.html>. Transmitted with App. 15, page 1, May 24, 1999.