

****This handbook was not published except electronically.**

GENERAL SERVICES ADMINISTRATION
WASHINGTON, DC 20405

ADM P 1020.2
October 19, 2003

GSA ORDER

SUBJECT: Procedures for **historic** properties

1. Purpose. This Order transmits procedures for complying with Federal regulations for the use, protection and enhancement of **historic** and cultural properties.
2. Cancellation. ADM 1020.1, dated August 20, 1982, and PBS P 1022.2, dated March 2, 1981, are canceled.
3. Background. The National **Historic** Preservation Act of 1966, as amended (16 U.S.C. § 470 et seq.), Executive Order 11593, Executive Order 13006, and Executive Order 13287 direct all Federal agencies to:
 - a. Administer the cultural properties under their control in a spirit of stewardship and trusteeship for future generations;
 - b. 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 archeological significance are preserved, restored and maintained for the inspiration and benefit of the people;
 - c. Institute Federal plans and programs that contribute to the preservation and enhancement of non-Federally-owned sites, structures and objects of historical, architectural or archeological significance;

- d. Initiate procedures to promote the viability and use of **historic** properties available to the agency, promote location of Federal agencies in **historic** buildings and **historic** districts in central business areas and overcome barriers to the use of **historic** properties;
- e. 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;
- f. Exercise caution during the interim period until inventories and evaluations required by section 3.e, above, are completed so that any Federally-owned property that might qualify for nomination is not inadvertently transferred, sold, demolished, or substantially altered without the benefit of appropriate consideration and procedures for external review and public participation provided under Federal law. Any questionable actions shall be referred to the Secretary of the Interior for an opinion regarding the property's eligibility for inclusion in the National Register of **Historic** Places;
- g. Initiate measures and procedures to provide for the continued utility and appropriate care of Federally-owned **historic** properties and non-Federally-owned **historic** properties that GSA has an opportunity to lease or acquire, in accordance with the professional standards prescribed by the Secretary of the Interior; and
- h. Establish procedures to monitor and report on the condition and use of **historic** properties under GSA control and to report annually on archeological activity associated with GSA construction projects.
4. Applicability. This Order applies to all GSA programs, activities and actions that could affect **historic** and cultural properties. This Order is for guidance of regional **historic** preservation officers and all other GSA personnel engaged in activities affecting **historic** properties.
5. Implementation. The GSA Federal Preservation Officer is responsible for coordinating with the Heads of Public Buildings Service Staff and Regional Offices to develop plans and procedures for implementing this

Order, including measurements and assessment methods for monitoring GSA's progress in meeting its stewardship goals within the framework of GSA business goals and practices. The Head of each Service, Staff and Regional Office shall establish responsibilities within their respective Service, Staff and Regional office consistent with those established by this Order.

Stephen A. Perry
Administrator

GENERAL TABLE OF CONTENTS

CHAPTER 1. INTRODUCTION

CHAPTER 2. STATUTORY REQUIREMENTS, REGULATIONS, AND GUIDELINES

CHAPTER 3. GSA **HISTORIC** PRESERVATION PROGRAM

CHAPTER 4. REGULATORY COMPLIANCE PROCEDURES

APPENDIX A. NATIONAL **HISTORIC** PRESERVATION ACT OF 1966, AS AMENDED

APPENDIX B. 36 C.F.R. PART 800

APPENDIX C. 41 C.F.R. PART 102-78

APPENDIX D. EXECUTIVE ORDER 11593

APPENDIX E. EXECUTIVE ORDER 13006

APPENDIX F. EXECUTIVE ORDER 13287

APPENDIX G. RHPO POSITION DESCRIPTION

PROCEDURES FOR **HISTORIC** PROPERTIES

TABLE OF CONTENTS

CHAPTER 1. INTRODUCTION

Paragraph	Paragraph
<u>Titles</u>	<u>Numbers</u>

Purpose	1
Objectives	2
Scope	3
Definitions	4

CHAPTER 2. STATUTORY REQUIREMENTS, REGULATIONS, AND GUIDELINES

Laws	1
Presidential directives	2
Regulations	3

CHAPTER 3. GSA **HISTORIC** PRESERVATION PROGRAM

Mission	1
Responsibilities	2
Qualification standards for GSA personnel and contractors	3
Training and education	4
Core program activities	5

CHAPTER 4. REGULATORY COMPLIANCE PROCEDURES

Summary of requirements	1
General goals	2

Identification and evaluation	3
Long-term preservation planning	4
Promoting the use of historic buildings	5
Actions affecting historic buildings.	6
Participation by interested parties	7
Determination of effect	8
Study of alternatives	9
Development of project compliance documentation	10
Mitigation measures	11
Architectural artifact salvage	12
Discoveries	13
Disaster management and emergency response	14
Cultural property other than real property	15

APPENDICES

APPENDIX A. NATIONAL **HISTORIC** PRESERVATION ACT OF 1966, AS AMENDED

APPENDIX B. 36 C.F.R. PART 800

APPENDIX C. 41 C.F.R. PART 102-78

APPENDIX D. EXECUTIVE ORDER 11593

APPENDIX E. EXECUTIVE ORDER 13006

APPENDIX F. EXECUTIVE ORDER 13287

APPENDIX G. RHPO POSITION DESCRIPTION

CHAPTER 1. INTRODUCTION

1. Purpose.

- a. The General Services Administration (**GSA**), as a real and personal property manager for the Federal Government, is entrusted with the care of many Federal public buildings, their contents and associated grounds. In this capacity, GSA is responsible for operating, maintaining, repairing, rehabilitating, altering and expanding Federal properties to meet a variety of Federal space needs. GSA is also responsible for providing space for the Federal Government in non-Federal properties and for constructing new Federal buildings, as agency space needs change.
- b. GSA manages both real property, such as Federal buildings, and personal property, such as custom designed furnishings, fine arts objects, vessels of cultural significance, underwater artifacts, and archeological artifacts.
- c. Many properties under GSA's jurisdiction or control are listed in or eligible for listing in the National Register of **Historic** Places (**National Register**) and many other properties are potentially eligible for listing in the National Register.
- d. GSA has a responsibility in the search for new space for its tenants to give priority to the use of **historic** buildings. Priority is given to reuse of available Federally-owned **historic** buildings, then to non-Federal **historic** buildings, especially those located in **historic** districts within central business areas.
- e. Because of the importance of these properties in America's history and culture, GSA has the further obligation to manage, maintain, use, repair, and improve these properties in a manner that will preserve their character-defining features and other qualities that make them eligible for listing in the National Register. This Order directs that each property under GSA's jurisdiction or control be evaluated for its historical and cultural significance, and that GSA consider the significant qualities of each property in planning and conducting its activities. This Order also provides guidance for carrying out GSA actions potentially affecting non-Federal **historic** properties in a manner that, to the greatest extent possible, preserves their significant features and qualities. The Order further describes the statutory basis for GSA's agencywide stewardship

vision and outlines a framework for accomplishing these stewardship goals within a cost-conscious, customer-focused business environment.

2. Objectives. Objectives of this Order are to:

- a. Define GSA's **historic** preservation program and its direction.
- b. Summarize laws and regulations guiding GSA's preservation policy and program structure.
- c. Summarize compliance responsibilities under the National **Historic** Preservation Act of 1966, as amended (**NHPA**), and other **historic** preservation laws and related authorities that apply to GSA's programs, activities and actions affecting **historic** and cultural properties.
- d. Define professional standards required of GSA personnel responsible for GSA's national and regional preservation programs, as well GSA employees, contract staff, design teams, specialist consultants, construction technicians, and others engaged in activities affecting **historic** buildings.
- e. Outline processes, standards, and approaches for effectively integrating Federal stewardship goals into specific GSA business activities.

3. Scope. This Order provides guidance for the program operations of GSA that have direct or indirect responsibility for or control over any action, activity or program that entails:

- a. Acquiring real and personal property;
- b. Consolidating and relocating Federal agencies;
- c. Leasing real property for Federal use;
- d. Directing Federal construction and the lease construction of space;
- e. Maintaining Federally-owned or administered real and personal property;

- f. Repairing, altering and improving Federally-owned and leased property;
- g. Assigning space;
- h. Disposing of real and personal property;
- i. Proposing undertakings to the Congress for authorization of appropriations that could affect Register or Register-Eligible Property (hereinafter defined); and
- j. Granting entitlements and permissions, including, but not limited to, leases, easements and approvals.

4. Definitions.

- a. Advisory Council on **Historic** Preservation: The Advisory Council on **Historic** Preservation (the **Council**) is an independent Federal agency created by NHPA to advise the President, Congress and other Federal agencies on **historic** preservation matters. GSA is a voting member of the Council. For consulting purposes, the Council retains staff for review and compliance in Denver, CO, and Washington, DC.
- b. Area of Potential Effect: The Area of Potential Effect (**APE**) is the geographical area within which direct and indirect environmental effects could be expected to occur and thus create the potential to change the historical, architectural, archeological, or cultural qualities possessed by a **historic** and cultural property. The APE is often larger than the project construction site, because projects may have visual and other effects on surrounding properties.
- c. Building Preservation Plan: The Building Preservation Plan (**BPP**) is a database that provides a standardized system for the analysis, management and treatment of individual buildings, groups of buildings and the overall GSA inventory. Individual BPPs include images and descriptions of significant spaces and materials; preservation zoning to establish the relative significance of exterior areas and interior spaces and recommendations for future treatment.

- d. Consultation: The act of formally seeking advice or conferring with the appropriate State **Historic** Preservation Officer (hereinafter defined), the Council and any other interested parties as provided for in the Council's regulations.
- e. Consulting Parties: The State **Historic** Preservation Officer, the Regional **Historic** Preservation Officer (hereinafter defined), GSA's Federal Preservation Officer (hereinafter defined), the Executive Director of the Council, the agency or organization(s) directly involved in the project, and any other interested parties as provided for in the Council's regulations.
- f. Contributing Feature: A material, element, assembly or space that contributes to the eligibility of a property for the National Register.
- g. Criteria of Effect: Criteria established by the Council to determine the extent to which an agency undertaking or group of undertakings will affect the qualities that may qualify a building, site or district for listing in the National Register (36 C.F.R. § 800.3).
- h. Criteria for Evaluation: The criteria established by the Secretary of the Interior to evaluate properties to determine whether they are eligible for inclusion in the National Register (36 C.F.R. § 60.4).
- i. Discovery during Implementation: An unanticipated discovery of an **historic** or cultural property during the implementation of an undertaking that has already complied with section 106 of NHPA, EO 11593 and 36 C.F.R. Part 800. How these resources are to be handled is detailed in the Council's regulations (36 C.F.R. § 800.7) and the National Park Service's proposed guidelines implementing the Archeological and Historic Preservation Act of 1974, as amended (36 C.F.R. Part 66).
- j. Effect: The extent of an undertaking's impact on an **historic** or cultural property as determined in accordance with the Council's Criteria of Effect (36 C.F.R. § 800.3).
- k. Eligible Property: Any district, site, building, structure, or object that

meets the National Register's Criteria for Evaluation. Properties that have been determined eligible are accorded the same protections as properties listed in the National Register, in accordance with the process outlined in 36 C.F.R. Part 63.

l. **Federal Preservation Officer:** Required for all Federal agencies under NHPA, the Federal Preservation Officer (**FPO**) is the qualified employee responsible for overseeing agency compliance with NHPA and related laws and regulations.

m. **Historic** and Cultural Property: Any building, site, district, structure, or object that has historical, architectural, archeological, or cultural importance. These classes of properties and their definitions are as follows:

(1) **District.** A geographically definable area, urban or rural, possessing a concentration, linkage or continuity of sites, buildings, structures, or objects that are united by past events or aesthetically by plan or physical development. A district may also be composed of individual elements that are separated geographically, but are linked by associations of history or architectural style.

(2) **Site.** The location of a significant event, a prehistoric or **historic** occupation or activity, or a building or structure, whether standing, ruined, vanished, or represented only by subsurface remains, where the location itself maintains historical or archeological value regardless of the value of any existing structures.

(3) **Building:** A structure created to shelter any form of human activity, such as a house, barn, church, hotel, or similar structure. "Buildings" may refer to an historically-related complex, such as a courthouse and jail or a house and barn.

(4) **Structure:** An edifice, usually an engineering project, designed to aid human activities, such as a bridge, canal or aqueduct.

(5) **Object:** Material thing of functional, aesthetic, cultural, historical, or scientific value that may be, by nature or design, movable yet related to a

specific setting or environment.

- n. **Historic** Structure Report: An **Historic** Structure Report (**HSR**) is a detailed planning document for the long-term care of **historic** properties, including a comprehensive survey and analysis of existing spaces and conditions; preservation zoning to establish the relative significance of exterior areas and interior spaces; and detailed recommendations for restoration, repair, maintenance, and rehabilitation.
- o. Indian Tribe: Any Indian tribe, band, nation, rancheria, pueblo, or other organized community, including any Alaska Native village or regional or village corporation as defined in or established under the Alaska Native Claims Settlement Act, 85 Stat. 688, 43 U.S.C. § 1601 et seq., which is recognized by the Secretary of the Interior as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.
- p. National Register: The National Register of **Historic** Places is a listing of districts, sites, buildings, structures, and objects significant in American history, architecture, archeology, and culture maintained by the Secretary of the Interior under authority of Section 2(b) of the **Historic** Sites Act of 1935, 49 Stat. 666, 16 U.S.C. § 462, and Section 101(a)(1) of NHPA, 16 U.S.C. § 470a(a).
- q. Register and Register-Eligible Property. See "Eligible Property."
- r. Regional **Historic** Preservation Officer: The Regional **Historic** Preservation Officer (**RHPO**) is the GSA employee responsible for overseeing compliance of regional projects and decisions with Federal preservation laws and regulations.
- s. Responsible Official: The Head of a Service or Staff Office, or Regional Administrator or his/her designee, under whose jurisdiction an action is being planned.
- t. Secretary's Standards: Recommended approaches set forth in the Secretary of the Interior's Standards for Rehabilitation and Illustrated Guidelines for Rehabilitating **Historic** Buildings (U.S. Department of the

Interior, National Park Service, 1992), as the same may be amended from time to time by the United States Department of the Interior, National Park Service, or its successor.

u. State **Historic** Preservation Officer: The State **Historic** Preservation Officer (**SHPO**) is the official, designated pursuant to 36 C.F.R. Part 61, responsible for liaison with Federal agencies for implementation of NHPA, for the coordination of the statewide survey of **historic** and cultural properties and the development of a comprehensive State **historic** preservation plan.

v. Tribal **Historic** Preservation Officer: The Tribal **Historic** Preservation Officer (**THPO**) is the official, designated pursuant to 36 CFR Part 61, responsible for liaison with Federal agencies for implementation of NHPA and for the coordination of surveys and consultation concerning **historic** and cultural properties under the sovereignty of Native American tribes and objects in which Native American tribes have an interest.

w. Undertaking: Undertaking means a project, activity or program funded in whole or in part under the direct or indirect jurisdiction of a Federal agency, including those carried out by or on behalf of a Federal 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 (36 C.F.R. § 800.16(y)).

5. List of Acronyms.

The following acronyms shall have the meaning set forth in the paragraphs referenced below:

- a. ABA: Architectural Barriers Act of 1968. 2.1(l)
- b. ADA: Americans with Disabilities Act of 1990. 2.1(l)
- c. A/E: Architect-Engineering firm. 3.2(g)
- d. AIRFA: American Indian Religious Freedom Act of 1978. 2.1(j)

- e. APE: Area of Potential Effect. 1.4(b)
- f. ARA: Assistant Regional Administrator, GSA. 3.1(e)
- g. ARPA: Archaeological Resources Protection Act of 1979. 2.1(l)
- h. ASA: Abandoned Shipwreck Act of 1987. 4.9(i)
- i. BPP: Building Preservation Plan. 1.4(c)
- j. CO: Contracting Officer 4.6(d)(14)
- k. EA: Environmental Assessment 4.9(f)(1)
- l. EIS: Environmental Impact Statement. 2.1(f)
- m. FPO: Federal Preservation Officer. 1.4(l)
- n. GSA: U.S. General Services Administration. 1.1(a)
- o. HABS: **Historic** American Buildings Survey. 2.1(b)
- p. HADPA: Historical and Archeological Data - Preservation Act of 1974. 2.1(h)
- q. HAER: **Historic** American Engineering Record. 2.1(b)
- r. HSA: **Historic** Sites Act of 1935. 2.1(b)
- s. HSR: **Historic** Structure Report. 1.4(n)
- t. MOA: Memorandum of Agreement, under Section 106 of NHPA. 4.4(a)
- u. NAGPRA: The Native American Graves Protection and Repatriation Act of 1990. 2.1(m)
- v. NEPA: The National Environmental Policy Act of 1969. 2.1(f)

- w. NHL: National **Historic** Landmark. 2.1(b)
- x. NHPA: National **Historic** Preservation Act of 1966. 1.2(c)
- y. PA: Programmatic Agreement, under Section 106 of NHPA. 4.9(c)
- z. PBCUA: Public Buildings Cooperative Use Act of 1976. 2.1(i)
- aa. PBS: Public Buildings Service, GSA. 3.1(a)
- bb. RA: Regional Administrator, GSA. 3.1(e)
- cc. RHPO: Regional **Historic** Preservation Officer. 1.4(r)
- dd. SHPO: State **Historic** Preservation Officer. 1.4(u)
- ee. THPO: Tribal **Historic** Preservation Officer. 1.4(v)
- ff. UFAS: Uniform Federal Accessibility Standards. 2.1(l)

CHAPTER 2. STATUTORY REQUIREMENTS, REGULATIONS AND GUIDELINES

This Order implements the following laws, Presidential directives and regulations:

1. Laws.

a. Antiquities Act of 1906, as amended, Pub. L. 59-209, 34 Stat. 225, 16 U.S.C. § 431 et seq. The earliest legislation enacted to protect **historic** properties, the Antiquities Act of 1906, as amended, provides for protection of **historic** or prehistoric remains or any object of antiquity on Federal lands; establishes criminal sanctions for unauthorized destruction or appropriation of antiquities; and authorizes scientific investigation of antiquities on Federal land. Antiquities include archeological sites and artifacts, other **historic** properties, Native American cultural objects as defined by the Native American Graves Protection and Repatriation Act of 1990 (see below), and paleontological resources.

b. Historic Sites Act of 1935, as amended, Pub. L. 74-292, 49 Stat. 666, 16 U.S.C. § 461 et seq. The **Historic** Sites Act of 1935, as amended (**HSA**), declares as national policy the preservation of prehistoric and **historic** sites, buildings and objects of significance in the interpretation and commemoration of the Nation's history. The HSA provides for protection of **historic** or prehistoric remains or any object of antiquity on Federal lands; establishes criminal sanctions for unauthorized destruction or appropriation of antiquities; and authorizes scientific investigation of antiquities on Federal lands, subject to permit and regulations. The HSA directs the National Park Service to establish a mechanism for cataloging and identifying historical archeological properties, leading to the establishment of the **Historic** American Buildings Survey (**HABS**), **Historic** American Engineering Record (**HAER**) and the National **Historic** Landmarks (**NHL**) Program.

c. Reservoir Salvage Act of 1960, as amended, Pub. L. 86-523, 74 Stat. 220, 16 U.S.C § 469 et. seq. The Reservoir Salvage Act of 1960, as amended, provides for the recovery and preservation of historical and archeological data, including relics and specimens, which might be lost or destroyed as a result of the construction of dams, reservoirs and attendant facilities and activities.

d. Secretary of Treasury - Function, 1965, as amended, Pub. L. 89-30, 79 Stat. 119, 40 U.S.C § 1309. This law authorizes the Administrator of General Services to make such contracts and provisions for the preservation, sale or collection of any property, or the proceeds thereof, which may have been wrecked, abandoned or become derelict, if the Administrator considers the contracts and provisions to be in the interest of the Federal Government and the property is within the jurisdiction of the United States and should come to the United States. Contracts and provisions should contain language that provides for the protection and preservation of all properties that are potentially protected under NHPA. Certain Confederate and Imperial Japanese properties transferred to the Federal Government under the terms of surrender are covered under this law.

e. The National **Historic** Preservation Act of 1966, as amended, Pub. L. 89-665, 80 Stat. 915, 16 U.S.C. § 470 et seq. The NHPA establishes a positive national policy for the preservation of the cultural environment and sets forth a mandate for protection in Section 106. The purpose of Section 106 is to protect properties listed in or eligible for listing in the National Register through Council review and comment on Federal undertakings that affect such properties. Properties are listed in the National Register or declared eligible for listing by the Secretary of the Interior. As developed by the Council's regulations, Section 106 establishes a public interest process in which the Federal agency proposing an undertaking, the SHPO, the Council, and interested organizations and individuals participate to assist the agency in reaching an informed decision or approach.

f. The National Environmental Policy Act of 1969, as amended, Pub. L. 91-190, 83 Stat. 852, 42 U.S.C. § 4321 et seq. The National Environmental Policy Act of 1969, as amended (**NEPA**), and its implementing regulations (40 C.F.R. §§ 1500-1508) establish policy regarding environmental protection and specifically require agencies to consider the environmental impacts of their actions, including impacts on historic properties and other cultural resources. Potential effects on such resources are to be considered in determining whether an action is, under NEPA, a major Federal action significantly affecting the environment, requiring the agency to prepare a detailed Environmental Impact Statement (**EIS**). The potential effects are also to be considered in any such impact statement and in making a final decision about the action. Compliance with NEPA should be coordinated with Section 106 of NHPA compliance.

g. An Act to Facilitate the Preservation of **Historic** Monuments, and For Other Purposes, as amended, Pub. L. 92-362, 86 Stat. 503, 40 U.S.C. § 550(h). This law authorizes the Administrator of General Services to convey to State and local public bodies, at no cost, National Register properties deemed appropriate by the Secretary of the Interior for **historic** monument purposes.

h. Historical and Archeological Data - Preservation Act of 1974, as

amended, Pub. L. 93-291, 88 Stat. 174, 16 U.S.C. § 469. The Historical and Archeological Data Preservation Act of 1974, as amended (**HADPA**), amends the Reservoir Salvage Act of 1960 to extend its provisions to any alteration of the terrain caused as a result of any Federally-funded or Federally-assisted construction project or Federally-licensed activity or program. In addition, HADPA provides a mechanism to fund mitigation for the protection of historical and archeological data.

i. Public Buildings Cooperative Use Act of 1976, as amended, Pub. L. 94-541, 90 Stat. 2505, 40 U.S.C. § 3306. The Public Buildings Cooperative Use Act of 1976, as amended (**PBCUA**), encourages use of **historic** buildings as administrative facilities for Federal agencies and activities and requires GSA to give preferential treatment to important **historic** and cultural properties in the management of space needs.

j. American Indian Religious Freedom Act of 1978, as amended, Pub. L. 95-341, 92 Stat. 469, 42 U.S.C. § 1996. The American Indian Religious Freedom Act of 1978, as amended (**AIRFA**), declares it to 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 Indians, Eskimos, Aleuts, and Native Hawaiians.

k. Archaeological Resources Protection Act of 1979, as amended, Pub. L. 96-95, 93 Stat. 721, 16 U.S.C. § 470aa et seq. The Archaeological Resources Protection Act of 1979, as amended (**ARPA**), provides protection for archeological resources found on public lands and Indian lands of the United States. ARPA prohibits the removal of archeological resources on public lands and Indian lands without first obtaining a permit from the affected Federal land managing agency or Indian tribe. ARPA provides civil and criminal penalties for those who remove or damage archeological resources in violation of the act. The implementing regulations for ARPA are set forth at 43 C.F.R. Part 7.

l. The Architectural Barriers Act of 1968, as amended, Pub. L. 90-480, 82 Stat. 718, 42 U.S.C. §§ 4151-4157, and the Americans with Disabilities Act of 1990, as amended, Pub. L. 101-336, 104 Stat. 328, 42 U.S.C. §

12101. The Architectural Barriers Act of 1968, as amended (**ABA**), and the Americans with Disabilities Act of 1990, as amended (**ADA**), are designed to guarantee that public buildings and places of public accommodations are accessible to individuals with disabilities. The implementing Uniform Federal Accessibility Standards (**UFAS**) include provisions allowing alternative approaches to preserve significant architectural features contributing to a building's National Register eligibility.

m. The Native American Graves Protection and Repatriation Act of 1990, as amended, Pub.L.101-601, 104 Stat. 3048-58, 25 U.S.C. §§ 3001-13. The Native American Graves Protection and Repatriation Act of 1990, as amended (**NAGPRA**), requires that Federal agencies and Federally-assisted museums inventory their collections for Native American Cultural Items, including human remains, associated funerary objects, unassociated funerary objects, sacred objects, and objects of cultural patrimony; and work with Native American groups to repatriate such items to the Native American groups with which they are associated. Section 3(c) permits the excavation of such items on Federal and tribal land with an ARPA permit, provided Native American groups are consulted and recovered items disposed of in accordance with NAGPRA requirements. Section 3(d) establishes procedures that must be followed in the event that a Native American cultural item is discovered on Federal or tribal land. The implementing regulations for NAGPRA are set forth at 43 C.F.R. Part 10.

2. Presidential directives.

a. Executive Order 11593, "Protection and Enhancement of the Cultural Environment." This Executive Order gives the Federal Government responsibility for stewardship of our Nation's **historic** and cultural properties. EO 11593 requires each Federal agency to identify all **historic** and cultural properties under its jurisdiction or control and to nominate all such properties that meet the National Register's Criteria for Evaluation for listing in the National Register. Until these activities have been completed, agencies are directed to exercise caution to assure that its **historic** and cultural properties are not inadvertently transferred, sold,

demolished, or substantially altered.

b. Executive Order 13006, "Locating Federal Facilities on **Historic** Properties in Our Nation's Central Cities." This directive requires that first consideration be given to locating Federal facilities in **historic** buildings and districts within central business areas. It also directs Federal agencies to remove regulatory barriers that are obstacles to using **historic** buildings in older central business area locations.

c. Executive Order 13287, "Preserve America." This directive calls on Federal agencies to build partnerships with State and local governments, Indian tribes and the private sector to use and promote **historic** buildings while contributing to community economic revitalization efforts, including heritage tourism. The Executive Order mandates periodic reporting on the condition of Federally-owned **historic** properties to increase agency accountability for their maintenance, protection and use.

3. Regulations.

a. 36 C.F.R. Part 800, Protection of **Historic** Properties. These regulations, issued by the Council and binding on all Federal agencies, establish procedures for agency compliance with Section 106 of NHPA.

b. 36 C.F.R. Part 79, Curation of Federally-Owned and Administered Archaeological Collections. These regulations, issued by the Secretary of the Interior and binding on all Federal agencies, prescribe how archeological materials and records produced by surveys and excavations under ARPA, NHPA and other authorities are to be managed.

c. 41 C.F.R. Part 102-73, Real Estate Acquisition. These regulations, issued by GSA, require agencies having a mission requirement to locate in an urban area to give first consideration to space in **historic** buildings and districts inside central business areas. Agencies may give a price preference of up to 10 percent for space in **historic** buildings and districts.

d. 41 C.F.R. Part 102-75, Real Property Disposal. These regulations, issued by GSA, authorize appraisers to consider the effect of **historic**

covenants on fair market value. Section 102-75.440 requires GSA to first notify states, eligible public offices and area clearinghouses concerning the potential public benefit conveyance of property as a **historic** monument. It also allows GSA, in considering the potential use of surplus property for the homeless, to weigh the needs of the homeless against competing considerations such as public benefit from education, health, public recreation, or **historic** monument use. Section 102-75.1200(b)(7) requires representatives of the homeless submitting applications for use of excess property to provide information that will enable the Department of Health and Human Services to comply with Federal **historic** preservation requirements.

e. 41 C.F.R. Part 102-78, **Historic** Preservation. These regulations, issued by GSA, provide guidance in furtherance of GSA's preservation program under Section 110 of NHPA for properties under the control of GSA or Federal agencies operating or maintaining such properties under a delegation of authority from GSA. The regulations outline Federal agency responsibilities to nominate eligible properties to the National Register and to consult with the SHPOs, the THPOs, Native American groups, and the Council to minimize adverse effects of Federal activities on **historic** properties. Procedures for preparing BPPs for Register and Register-Eligible Property under agency control and for investigating proposed sites for construction of Federal buildings or Federally-leased buildings to identify **historic** or culturally significant property are also outlined.

f. 41 C.F.R. Part 102-79, Assignment and Utilization of Space. Section 102-79.60 requires that agencies use, to the maximum extent feasible, **historic** properties already owned or leased by the agency, prior to acquiring, constructing or leasing buildings. Section 102-79.55 requires agencies to give consideration to available space in properties under the control of the U.S. Postal Service, if space is not available in Government-owned or leased buildings, prior to acquiring, constructing or leasing buildings. Many such properties are **historic** buildings in older city centers, enabling agencies, in so doing, to fulfill the locational objectives of Executive Orders 12072 and 13006.

CHAPTER 3. GSA'S HISTORIC PRESERVATION PROGRAM

1. Mission.

a. Agency mission. The Public Buildings Service (**PBS**) provides workspace for Federal employees in both government-owned and leased buildings. PBS real estate management activities include acquisition of sites and buildings, construction, leasing, repair, alteration, and maintenance. Within GSA's real estate inventory are many properties significant in American history, architecture, archeology, engineering, and culture. GSA planning, design, construction, and disposal processes have the potential to affect the integrity of **historic** properties in a community, both GSA-owned and other properties. Common cultural property affected by GSA activity includes archeological artifacts discovered during GSA construction projects, significant properties controlled, leased or acquired by GSA and **historic** districts and buildings adjoining GSA activity.

b. Agency-wide coordination. GSA's national preservation program serves as a focal point for the development of strategies to facilitate agency-wide compliance with the spirit and substance of preservation laws and directives. The office of the FPO, located in the GSA headquarters of PBS, is responsible for providing agency-wide access to preservation-related information and support. This requires establishing cross business and cross regional lines of communication and determining which types of communication will convey most effectively different types of information.

c. Agency-wide knowledge building. Providing employees with access to information on **historic** buildings, preservation procedures and guidance requires close coordination between GSA's national and regional preservation programs and its service and staff offices. Establishing information management standards for data uniformity, accuracy and continuity requires structured regional and national office interaction and procedures to facilitate quality control. Incorporating Federal stewardship goals into GSA's business mission requires integrating preservation-related information systems and business-related information

systems, such as GSA real estate, asset business planning, engineering evaluation, project information, and other databases.

d. Promoting efficient use of agency resources. Supporting GSA's business goal of providing quality workspace cost effectively also requires a nationally coordinated effort to promote knowledge exchange, to develop, document and disseminate best practices and to eliminate redundant effort.

2. Responsibilities.

a. Agency responsibilities under NHPA. It is GSA's responsibility to determine whether real property that it manages or that may be affected by GSA action may be eligible for the National Register and to seek alternatives that minimize adverse effects upon the qualities that may qualify such properties for the National Register, following applicable regulations (36 C.F.R. §§ 800.4 and 800.6, respectively). Many GSA-managed buildings are included in the National Register. The definition of historic property under NHPA also includes properties that are eligible for the National Register, whether or not they have been nominated for inclusion. Federal agencies are responsible for evaluating eligible and potentially eligible properties and determining the effect that agency actions may have on them.

b. Agency Responsibility outside of NHPA. GSA has responsibilities with respect to some kinds of **historic** and cultural resources, even if they are not eligible for the National Register. Consideration of **historic** properties under NHPA does not necessarily satisfy all of GSA's legal responsibilities, such as compliance with NEPA. While most obligations relate to GSA's responsibilities under NHPA and Executive Order 13006, others relate to statutes governing specific types of resources, such as underwater artifacts or exceptional circumstances.

c. Public Buildings Service National and Regional Program Offices. All affected PBS National and Regional program offices shall develop plans, in coordination with the FPO, to implement this Order. PBS Assistant Commissioners and Regional Business Line Directors shall take

immediate steps to implement the provisions of this Order.

(1) It shall be the responsibility of each region within GSA to identify, evaluate, protect, and enhance districts, sites, structures, buildings, and objects significant in American history, architecture, archeology, and culture. These properties include those that are listed in, determined to be eligible for listing in or that may be eligible for listing in the National Register.

(2) GSA shall consider the needs of American Indians, Eskimo, Aleut, and Native Hawaiians in the practice of their traditional religions. To protect Native American religious cultural rites and practices, religious leaders or other native leaders (or their representatives) shall be consulted concerning areas of potential conflict arising from the management of properties under GSA jurisdiction and efforts shall be made to eliminate or reduce such conflicts.

(3) Avoidance of adverse effects to **historic** and cultural properties shall always be attempted. When avoidance of adverse effects is not economically feasible or technically prudent, or when factors related to an undertaking from the standpoint of overall public benefit warrant alternatives that may result in adverse effects, such effects shall be minimized to the extent possible.

(4) Compliance with Section 106 of NHPA, Executive Orders 11593, 12072, 13006, and 13287, implementing regulations set forth at 36 C.F.R. Part 800, and related laws and directives, shall be integrated with other environmental considerations under NEPA and 40 C.F.R. § 1502.25(a) of the Council on Environmental Quality's regulations implementing NEPA. All Services and Staff Offices are responsible for timely Section 106 compliance for each Register or Register-Eligible Property that may be affected by its undertakings, even if an EIS is not required by NEPA.

d. Commissioner, Public Buildings Service. The PBS Commissioner acts for the Administrator in all agency-wide **historic** preservation matters, representing GSA on the Council and in connection with major agreements concerning GSA preservation-related activities and programs

of national significance.

e. Regional Administrator. The Regional Administrator (**RA**) acts for the Administrator in **historic** preservation matters within his or her region. Signature authority for region-specific NHPA-related agreements, terminations, correspondence, or other official matters may be delegated to the Assistant Regional Administrator, Public Buildings Service (**ARA**). The FPO must concur in such agreements prior to regional submission to the RA or ARA for signature.

f. Federal Preservation Officer. Agency-wide coordination of cultural resource management and compliance with NHPA and related laws, directives and statutes is vested in the FPO, who shall serve as director of GSA's national preservation program. The FPO reports to the Commissioner of PBS regarding preservation issues of national concern and on GSA activities presenting substantial legal exposure and risk of public controversy. The FPO serves as the Commissioner's delegate to the Council in quarterly Council meetings and related activities that neither the Administrator nor the PBS Commissioner is able to attend. The FPO is responsible for overseeing compliance with ARPA, NAGPRA, HADPA, 36 C.F.R. Parts 79 and 800, AIRFA, HSA, and the **historic** preservation aspects of ABA, ADA, PBCUA, NEPA, Executive Orders 11593, 12072, 13006, and 13287, and related laws and directives. The FPO is responsible for:

- (1) Articulating GSA's stewardship vision;
- (2) Guiding regional and headquarters offices on the relationship between preservation and other agency goals;
- (3) Developing and implementing, in coordination with the Regional **Historic** Preservation Officers and appropriate PBS offices, GSA's national strategies to promote the use and viability of **historic** buildings;
- (4) Complying with 36 C.F.R. § 800.6(c) and (d) for all GSA projects, procedures and decisions, and reviewing and concurring on NHPA agreements and actions of national concern;

(5) Developing, in coordination with relevant PBS program offices, information gathering and management systems to fulfill Federal reporting requirements concerning **historic** buildings, archeological activity and preservation matters, in compliance with NHPA, Executive Order 13287 and related laws and directives; and

(6) Submitting GSA nominations to the Keeper of the National Register.

g. Regional **Historic** Preservation Officer. The RHPO directs GSA's **historic** preservation program at the regional level and is responsible for coordinating day-to-day regional compliance with relevant **historic** preservation laws and regulations. The RHPO acts as the liaison between the Regional Administrator, the FPO and State and Federal compliance agencies. The RHPO, at a minimum, must meet the Secretary of the Interior's qualification standards for preservation professionals. The RHPO must also have expert technical knowledge of architectural conservation and rehabilitation principles and practices and demonstrated skill in building interpersonal relations to conduct effective public affairs activities, articulate complex positions persuasively and present GSA in a positive light. The RHPO shall be organizationally positioned and given authority to lead and manage actively the regional preservation program and implement national preservation policies and initiatives. Unless it can be demonstrated, with the concurrence of the Commissioner and the FPO, that the RHPO is able to fulfill all required duties of the position in a part-time capacity, the position shall require a full-time specialist functioning in senior staff capacity. In carrying out these duties, the RHPO is responsible for:

(1) Initiating consultation with the appropriate SHPO at the earliest appropriate stage in planning or consideration of an undertaking, prior to any action that may limit consideration of alternatives or mitigation measures. Copies of all correspondence sent by the RHPO to the SHPO or the Council shall be simultaneously sent to the FPO, including relevant correspondence from the SHPO or the Council;

(2) Consulting with the Council and other interested parties under 36

C.F.R.

§ 800.6 on regional activities and actions;

(3) Developing appropriate plans for public participation under 36 C.F.R. § 800.6 and for effective management of communications and publicity on complex or controversial actions, in cooperation with appropriate regional Public Affairs and Congressional Affairs staff, to diffuse controversy and guide public relations;

(4) Making preliminary determinations of eligibility and effect. Determinations of eligibility must be forwarded to the FPO for concurrence prior to forwarding National Register nominations to the Department of the Interior for consideration;

(5) Participating in the development of regional portfolio strategies, including alternatives for remedying financially troubled **historic** assets, reprogramming historically significant spaces or buildings to serve new uses and creative real estate transactions such as **historic** building exchanges, outleases and public-private partnerships;

(6) Guiding regional housing and investment decisions with the goal of positioning GSA's historically significant buildings to be strong financial performers;

(7) Developing, in consultation with GSA disposal staff, legal counsel and the SHPO, transfer conditions and associated documents, such as covenants and design guidelines, to protect architecturally significant materials, features and qualities that may contribute to a property's eligibility for the National Register. Such documents also include agreements executed in compliance with Section 106 of NHPA outlining planned protective covenants and special procedures or provisions guiding the property transfer, redevelopment and subsequent change, such as procedures for assessing use suitability and the long-term stewardship reliability of prospective transferees in public benefit or competitive transfers, and provisions for third party oversight of alterations or use changes subsequent to transfer;

- (8) Reviewing all undertakings of Services and Staff Offices that may affect **historic** and cultural property and educating regional staff, through training programs, the Internet and other means, about GSA compliance responsibilities and successful approaches for solving preservation challenges;
- (9) Reviewing design and construction project development documents for repairs, alterations and new construction affecting **historic** buildings, such as architect-engineering firm (**A/E**) solicitations, scopes of work, specialist qualifications, design documents, site solicitations, construction documents, and contractor qualification submissions;
- (10) Providing technical assistance to project teams concerning appropriate materials, methods, design approaches, operational solutions, and resources;
- (11) Monitoring and guiding real estate transactions such as site solicitations, leases, initial space alterations, and other activities affecting **historic** buildings not owned by GSA to minimize harm to **historic** buildings and explore opportunities to use available **historic** buildings;
- (12) Coordinating regional compliance with Federal reporting requirements related to **historic** buildings, archeological activity and preservation matters, in compliance with NHPA, ARPA, Executive Order 13287, and related laws, orders and directives;
- (13) Reviewing other Federal agencies' compliance with Section 106 to verify that the agency's Section 106 compliance is consistent with the requirements established by this Order. Examples include review of tenant-initiated alterations in GSA **historic** buildings under tenant agency management and agency documentation prepared in association with declarations of excess, to confirm that agencies disposing of Federal **historic** property complete required due diligence, including preparing required documentation, prior to GSA acceptance of excess Federal property;
- (14) Developing and negotiating compliance agreements and cooperative

agreements between GSA and other organizations to further GSA stewardship goals;

(15) Advising the ARA and program directors concerning major preservation issues that may raise a high level of public interest, controversy or legal exposure and alternative solutions for resolving these challenges and managing risk;

(16) Assessing, on an annual basis, regional success implementing GSA stewardship policies and programs in support of Federal stewardship goals. This assessment shall include recommendations for improvement and a prioritized plan for addressing deficiencies;

(17) Developing budgets and administrative procedures to facilitate regional compliance with preservation laws and directives; and

(18) Developing training, recognition programs and other initiatives to improve regional staff understanding of and ability to further Federal stewardship goals.

h. Sharing of Responsibility. All GSA actions that have the potential to affect **historic** or cultural resources must comply with all applicable **historic** preservation laws and regulations. Consequently, all GSA personnel need to be aware of and satisfy these legal requirements. It is also vital that all staff that may become involved in activities triggering compliance procedures are trained and informed so that the requirements are properly met. Program directors shall require program staff to notify the RHPO at the earliest stages of the proposed undertaking to request technical assistance and compliance coordination.

3. Qualification standards for GSA personnel and contractors.

a. Preservation staff. Full time preservation staff, including the FPO, the RHPOs and individuals representing the FPO or the RHPO, shall be preservation specialists meeting the qualification criteria promulgated by the Secretary of the Interior for preservation professionals and having sufficient knowledge of Federal and GSA preservation policy and procedures to carry out the requirements of this Order in a credible

manner.

(1) The FPO, at a minimum, must meet the Secretary of the Interior's qualification standards for preservation professionals, have applicable experience with **historic** building repair and alteration projects and a demonstrated understanding of preservation theory and design principles as codified in the International Charter for the Conservation and Restoration of Monuments and Sites and the Secretary's Standards. This fulfills the requirement under Section 110(c) of NHPA that each Federal agency have a qualified FPO.

(2) The RHPOs must meet the qualification standards described in GSA's standard position description for RHPOs, series 808 and 1001, a copy of which is attached hereto as Appendix G. In addition, the RHPOs must have leadership and technical skills to establish credibility with GSA project staff and preservation review organizations to solve complex project challenges and to guide GSA decisions affecting **historic** property. The RHPOs should receive training in negotiation and conflict management to resolve conflicts in a manner that builds GSA's rapport with GSA clients, project teams, external organizations, and the public.

(a) The RHPO shall have a working knowledge of:

(i) Architectural history, building systems and the philosophies and techniques of **historic** preservation;

(ii) American cultural development and urban history, as needed to analyze, evaluate and develop programs, projects and documentation regarding surveys of and planning for the management of regional GSA **historic** properties;

(iii) Technical and logistical requirements of field surveys for the purpose of resource identification and documentation, including technical skills in research and editing;

(iv) Technical literature (both standard and recent) in preservation and related fields;

(v) Codified procedures, published rules and regulations and policies of Federal preservation programs, and an understanding of private or non-Federal programs and policies that may serve the objectives of **historic** preservation;

(vi) Existing and currently developing legislation on the Federal, State or local levels that relates directly or indirectly to **historic** preservation; and

(vii) Presentation, negotiation and conflict management techniques to represent GSA interests while serving as an effective advocate for Federal stewardship.

(b) The RHPOs should be dedicated exclusively to the RHPO function and define it broadly to extend beyond perfunctory oversight of Section 106 compliance submissions to guiding the region's portfolio stewardship strategy and actively promoting a stewardship outlook in all PBS programs affecting **historic** buildings. Where this is not possible, the RHPO should be supplemented with preservation specialist staff, on-site preservation contract specialist support, specialists on detail, or other means so that these skills are readily available to GSA staff and contract project teams to accomplish the program workload.

(c) To make a meaningful contribution to GSA's regional stewardship strategy and practice, the RHPOs must have a fluent understanding of how the region is organized and how major business decisions are made. The RHPOs must be positioned organizationally and functioning at a level that enables them to coordinate effectively with all business lines and management levels.

Preservation staff serving a support role in GSA national or regional preservation programs may also include student interns in an accredited preservation degree program or related academic discipline, graduates of such programs and individuals trained in affiliated disciplines, such as engineering and architecture, having appropriate training and experience to understand and support GSA preservation philosophy, policy and

programs. Only individuals meeting the Secretary of the Interior's qualification criteria may be permanently appointed to positions as the FPO, the RHPO or official representatives of the FPO or the RHPO.

b. PBS staff.

(1) PBS staff shall be given regular training and support, as necessary, so that all individuals responsible for activities potentially affecting cultural property understand and appreciate GSA's stewardship philosophy, legal responsibilities and procedural implications, such as expertise that must be procured or studies that must be performed to consider proper alternatives and minimize adverse effects, and time that must be allowed in project development so that compliance tasks are completed in a prompt manner.

(2) Project teams should understand how to incorporate preservation compliance requirements into design scopes of work; to evaluate or obtain the necessary assistance to evaluate the competency of preservation professionals proposed for project design teams and specialist firms and technicians performing work on **historic** materials; to oversee the execution of design projects involving architecturally significant spaces and materials; and to take appropriate action in the event of discoveries or unanticipated conditions affecting a **historic** building project in progress.

(3) Facilities Managers should be able to identify significant spaces within **historic** buildings they oversee and to distinguish between **historic** and non-**historic** materials and features. They should understand and be able to apply the Secretary's Standards applicable to **historic** building repairs and alterations. They should understand which types of work require external compliance review and which types must be performed by firms specializing in **historic** buildings. Facilities staff should be trained to incorporate preservation requirements into design and construction scopes of work and to oversee construction contractors to guard against inadvertent damage to **historic** materials.

c. A/E design teams and consultants.

(1) Preservation architects, architectural conservators and other specialists involved in the preparation of BPPs, the study of project alternatives, the diagnosis and treatment of material deficiencies, or development of designs for repair, restoration, rehabilitation, and other work affecting **historic** buildings must meet the Secretary of the Interior's Standards for Preservation Professionals and be able to demonstrate successful experience completing similar projects in **historic** buildings of comparable complexity.

(2) Detailed qualifying standards and procedures for evaluating contract preservation specialists are outlined in GSA's *Qualification Requirements for Preservation Architects and Other Specialists*, available on the National Office preservation homepage under Project Management at www.gsa.gov/historicpreservation.

d. Construction contractors and technicians. Construction firms and individual technicians performing work on **historic** building materials must have successful experience performing comparable work in accordance with the recommended approaches set forth in the Secretary's Standards. Such firms and individuals must also satisfy qualitative evaluation criteria associated with the specific trades and skills involved, as described in GSA's *Competency Specifications for Preservation Construction Contractors*, available on the National Office preservation homepage under Project Management at www.gsa.gov/historicpreservation.

4. Training and education.

a. National and regional training programs.

(1) The FPO, in cooperation with the RHPO, establishes training priorities and methods so that all GSA staff involved in decisions that may affect **historic** properties understand GSA's stewardship goals, compliance responsibilities and practices. The national preservation program, under the guidance of the FPO, shall serve as a clearinghouse for resources concerning Federal preservation regulations and procedures; GSA preservation policy; best preservation practices; real estate business decisions involving cultural property; and repair and alteration project

planning.

(2) Training for PBS headquarters and regional staff will include both formal instruction and written guidance to provide for maximum staff access, including on-line resources and advocacy building initiatives to build stewardship commitment. Critical reference material will be provided in electronic as well as hard copy format, whenever possible.

(3) NHPA compliance training will be provided periodically to all GSA staff and management. Executive training will include an overview of current regulatory requirements and GSA's responsibilities under NHPA and related laws and directives. Training for GSA staff will include guidance on initiating consultation and compliance review early in project development to facilitate appropriate consideration of alternatives before GSA is committed to a specific course of action.

b. Regional training. Training for regional PBS staff should be tailored to the specific concerns and challenges of each organizational group (asset management, project development, property acquisition, facilities management). Regional preservation programs will provide ready access to basic information required for compliance with GSA policy and Federal preservation law, including:

(1) A regional preservation homepage describing GSA's stewardship vision and responsibilities, with lists of regional **historic** buildings, RHPO contact information and a link to the national preservation program homepage.

(2) A brochure or program handout summarizing the regional process for project review, referencing key contacts, resources such as BPPs and web addresses for additional information.

c. Preservation program staff. Preservation program staff shall annually prepare individual development plans and receive training to maintain current knowledge in the areas in which they are advising, educating and interacting with GSA staff, contract project teams and outside review groups.

5. Core program activities.

a. Supporting Federal preservation laws and policy. To comply with Section 110 of NHPA and Executive Order 13287, GSA must identify **historic** properties under its control and establish plans for their protection, care and use. The FPO is responsible for developing, in consultation with the RHPOs and appropriate PBS staff, comprehensive strategies and procedures to facilitate GSA compliance with Federal preservation laws. The FPO is also responsible for effectively integrating regional and building-specific planning with national information networks and providing maximum possible access to preservation guidance by GSA staff and contract project teams to promote consistency. The RHPOs, in cooperation with the FPO, are responsible for preparing and making available to GSA staff and contract project teams detailed building-specific plans to guide the maintenance and alteration of **historic** buildings GSA controls or uses. Regional BPPs, asset business plans and portfolio community strategies need to reflect national preservation policy to promote consistency and continuity.

(1) Information management. National and regional preservation programs will include provisions for maintaining records and artifacts as required by law and as necessary to manage effectively the national **historic** building inventory, including, but not limited to:

(a) Current list of **historic** buildings in the GSA inventory, including National Register designation status.

(b) Current list of **historic** buildings leased by GSA.

(c) Current list of completed BPPs and HSRs.

(d) Schedule for completing BPPs for buildings for which BPPs have not yet been completed, or for which BPP content is no longer accurate and current.

(e) Section 106 compliance correspondence, maintained in project files and official (chronological) correspondence files. Duplicate copies of correspondence between GSA and the SHPOs or the Council concerning

projects that may result in adverse effects on **historic** properties will be provided to and maintained by the FPO.

(f) Current inventory of archeological artifacts, including artifact type, source, volume, and storage location, as required by 36 C.F.R. Part 79.

To facilitate efficient access to building information and guidance, provision for Internet access to available guidance will continue to play an integral role in GSA's preservation program. Development of internet-accessible databases will be coordinated with relevant PBS offices so that **historic** building information is linked integrally to appropriate PBS inventory-wide databases.

(2) Building Preservation Plans, **Historic** Structure Reports and related studies. GSA uses BPPs and HSRs to identify the qualities and elements that contribute to the **historic** character of individual buildings and to guide change accordingly. The HSR is the standard document used in Federal and non-Federal preservation to guide changes to, and the care of, **historic** buildings. HSRs include, at a minimum, a comprehensive survey and analysis of existing spaces and conditions, with detailed recommendations for restoration and maintenance. The BPP, a proprietary database of individual building plans, similar to HSRs, was developed in the 1990s specifically for GSA.

(a) Both HSRs and BPPs graphically delineate the architectural hierarchy of spaces in each building to show which areas require special care and which can accommodate greater change without compromising the building's **historic** integrity. Both documents provide specific recommendations regarding the care and treatment of **historic** materials and spaces.

(b) The BPP database serves a larger purpose as GSA's management tool for monitoring building conditions and physical changes, as well as for providing a central repository for visual and narrative building documentation. The BPP provides a standardized, automated system for the analysis, management and treatment of individual buildings, groups of buildings and the overall GSA inventory. The database contains, in

addition to individual BPPs, a template for creating nominations to the National Register and links National Register nomination forms and other building-specific documents such as GSA Building Evaluation Reports and Asset Business Plans. Data in BPPs can also be used to rank GSA's **historic** buildings by architectural merit to assist GSA in making decisions regarding investment in and appropriate treatment of **historic** properties.

(3) Other technical studies and guidance. Technical studies concerning repair and alterations for areas potentially effecting **historic** building exteriors or significant interior spaces will be prepared only by firms and individuals meeting, at a minimum, the Secretary of the Interior's professional qualification standards. Only individuals meeting or exceeding these professional standards will be authorized to perform internal GSA review of the technical studies. Technical guidance provided in BPPs, related databases and GSA Internet sites will be periodically reviewed and updated, as necessary, by qualified staff so that the guidance remains sound and valid.

b. Develop strategies to promote the use and viability of **historic** buildings. GSA national and regional programs shall cooperate to develop strategies to promote the use, full occupancy and economic viability of **historic** buildings, especially GSA-controlled **historic** buildings representing the Federal government's public building legacy.

c. Promote broad-based stewardship.

(1) Promoting **historic** building recognition and appreciation. GSA national and regional programs shall include development of programs and a variety of products in electronic and print media to promote appreciation of GSA's **historic** buildings and understanding of preservation issues.

(2) External advocacy. GSA national and regional preservation programs will include activities for actively developing and maintaining positive relationships with external oversight groups, preservation organizations and the general public. GSA preservation homepages will include general information commonly requested by the public and up-to-date information

on projects and issues of substantial public interest.

(3) Promoting discourse. GSA's national and regional preservation programs will work together to improve the ability of GSA associates to respond appropriately to customers and external stakeholders on matters concerning **historic** building projects and **historic** preservation, to communicate a stewardship outlook effectively and to put GSA in the best possible light.

(4) Performance measures. The FPO and the RHPOs will cooperate in developing national and regional performance measures to assess GSA's success in meeting agency preservation goals while fulfilling its mission. Performance evaluations for individuals and teams having substantial responsibility for activities or actions affecting **historic** buildings will include assessment of the individual's commitment to and success in meeting GSA's stewardship goals.

(5) Employee recognition. GSA national and regional preservation programs will include provisions for recognizing exceptional projects, practices and individuals who advance GSA's preservation goals.

d. Promoting best practices. GSA's national preservation program shall coordinate with the RHPOs and regional portfolio and project teams to identify and disseminate model solutions and best preservation practices.

CHAPTER 4. REGULATORY COMPLIANCE PROCEDURES

1. Summary of requirements. The NHPA and other Federal laws require all Federal agencies to establish programs for managing **historic** properties under their jurisdiction or control and to consider the effects of their actions on **historic** properties regardless of ownership. It shall be the responsibility of each service within GSA to identify, evaluate, protect, and enhance buildings, structures, districts, sites, and objects significant in American history, architecture, archeology, engineering, and culture. These **historic** and cultural properties include those listed in or eligible for

listing in the National Register. In managing Federal buildings, leasing non-Federal buildings, constructing new facilities, and disposing of surplus Federal real estate, GSA is responsible for carrying out these requirements.

2. General goals.

a. Use of **historic** buildings. The NHPA and Executive Order 13006 direct Federal agencies to give first consideration, in locating Federal facilities, to **historic** buildings, especially those located within **historic** districts in central business areas. To help keep Federal **historic** buildings viable, it is GSA's policy, to the extent practicable, to use Government-owned **historic** buildings first, giving them greater weight in locational decisions and capital investment. GSA also takes into account the relative importance of buildings to their communities, encouraging client agencies to locate in central business areas where a Federal presence will bolster community efforts to revitalize older urban areas. When space requirements cannot be met by Federally-owned **historic** buildings, GSA seeks opportunities to lease space in non-Federal **historic** buildings and to make use of **historic** buildings on sites purchased for the construction of new Federal facilities.

b. Meaningful consultation.

(1) General. Consultation with external review groups and interested parties undertaken in compliance with NHPA, NEPA and other preservation laws and statutes shall be initiated early enough in project development to provide for an opportunity for meaningful comment and public participation. The goal of compliance consultation shall be to assist GSA in making decisions that address agency needs and public concerns to the greatest extent possible and to achieve better project outcomes. GSA clients shall be properly informed about consultation requirements and given realistic expectations concerning the project schedules and options.

(2) Alterations to **historic** buildings. Design teams for projects potentially affecting **historic** building spaces and materials must include qualified

preservation design professionals who are involved integrally in the project design and execution. Project design submissions will include preservation reports illustrated with appropriate photographs and drawings, submitted throughout the course of design development, identifying preservation design issues and showing how they are being addressed.

(3) Site selection and new construction. Site selection advertisements must comply with Executive Order 13006 by inviting offerors to submit for consideration sites that include potentially usable **historic** property. Design Scopes of Work for new construction on sites containing **historic** buildings must require GSA project design teams to explore design alternatives that reuse **historic** buildings, and include reuse alternatives among the initial concept design options.

(4) Public participation. Projects having a significant impact visible to the public, such as major exterior alterations, new construction, disposal, or change of use, must allow adequate time for public participation and must initiate consultation before planning decisions and budgetary actions affecting the project outcome, such as prospectus development and site selection, are made. Consultation for projects likely to result in demolition of **historic** properties or generate substantial public controversy must request the participation of the Council to assist GSA in anticipating public response and developing appropriate public participation processes to minimize GSA's legal exposure and the risk of project delay.

c. Cooperation with local commissions. Although Federal actions are not required to comply with local restrictions governing new construction or building alteration, GSA policy is to consult and cooperate with certified local governments, planning commissions and other appropriate groups to take community development plans into account in GSA decisions involving location, construction, expansion, major alteration, or disposal of Federal facilities.

3. Identification and evaluation.

a. General. Section 110 of NHPA requires agencies to identify **historic**

resources under their jurisdiction and to establish preservation plans for their long-term care. To prevent inadvertent destruction of **historic** resources, the Federal process guiding changes to **historic** properties requires agencies to consider effects of their undertakings on properties that *may be eligible* for the National Register, even if a formal eligibility determination has not been made.

b. Identification and Evaluation. In accordance with Executive Order 11593, NHPA and implementing regulations (36 C.F.R. Part 800), GSA shall identify, evaluate, nominate, and protect **historic** and cultural properties under its control that may meet the eligibility criteria for listing in the National Register. BPPs will be prepared and updated for buildings listed in, formally determined eligible for or determined by the RHPO or the FPO as meeting National Register eligibility criteria. Identification and evaluation of **historic** and cultural properties that may be acquired by GSA shall be performed prior to, or as part of, feasibility, site acquisition or other studies undertaken to assist GSA in comparing agency housing alternatives. The evaluation shall be completed early enough to be taken into account without affecting the schedule, cost or practicality of an alternative.

c. Eligibility criteria. The eligibility of such resources shall be assessed according to the Criteria for Evaluation established by the National Park Service. Professional services shall be employed as necessary to determine under which criteria a property may qualify for inclusion in the National Register and to substantiate GSA's determination.

d. Nominations. Each region shall have a program to nominate Eligible Property to the National Register and to complete BPPs for Register and Register-Eligible Property over which GSA has jurisdiction, custody or control, including leased buildings principally occupied by GSA or undergoing substantial rehabilitation to accommodate GSA tenants.

e. Reduction of cost. Regions shall seek opportunities to reduce the cost and effort of nominating properties to the National Register by preparing nominations in conjunction with BPPs or similar studies.

f. Age threshold. National Register eligibility criteria generally require that a building be 50 years old before it can be considered eligible for listing. To take into account the length of GSA's planning, design and construction process, a threshold of 45 years old has been established for assessing the eligibility of a building for listing in the National Register. The intent is to prevent project delays and increased design and construction costs due to new compliance requirements affecting a project already in development.

g. Buildings under 45. Buildings under 45 years of age will be assessed according to the National Register criteria of exceptional significance, as detailed in National Register guidance on determining the eligibility of properties under 50 and GSA studies on Federal public buildings of the modern era.

h. National **Historic** Landmarks. NHL is the highest level of National Register designation. These properties include buildings and structures that are exceptionally significant illustrations of America's **historic** and architectural heritage as well as archeological discoveries and sites possessing exceptional interpretive or educational value. The National Park Service monitors the general condition of NHLs and Federal agencies are expected to give them special care. GSA is responsible for identifying, evaluating and protecting its properties that may qualify as NHLs, including properties that may have acquired additional significance since their initial evaluation. GSA will monitor closely the physical and financial condition of the NHLs it controls and will pay special attention to them when planning any actions that may affect their significant qualities.

i. Properties of undetermined status. The NHPA affords the same protection to properties of undetermined status that are potentially eligible for the National Register as for properties listed in or determined eligible for the National Register. Care will be taken to protect properties that are in the process of being nominated, whose nomination is pending or that are potentially eligible but require additional study to substantiate their National Register status.

j. Identification of properties within areas of potential environmental

impact. Prior to the authorization of any undertaking that may affect **historic** or cultural property under NHPA or NEPA, the APE shall be investigated by a qualified firm or individual to identify potentially significant **historic** or cultural property. The program responsible for the project or action shall notify the RHPO early in project planning so that an appropriate identification study can be performed. The project schedule and scope of services shall allow time for consultation with the SHPO and representatives of affected Native Americans, if any, during the formulation of the study plans, during the study and at the conclusion of the study. Studies concerning property affected, but not already owned, by GSA shall include, at a minimum:

- (1) Overview: An investigation of local, State and national inventories and a field examination of the study area by a qualified professional. The overview determines what information already exists on the area under consideration and provides the basis for determining what additional information may be necessary to inventory **historic** and cultural properties within the study area adequately. The purpose of the overview is to identify Register and Register-Eligible Property within the APE.
- (2) Evaluation. An evaluative study is normally required to obtain sufficient documentation to apply the Criteria for Evaluation to previously unidentified **historic** and cultural properties. An evaluation involves intensive examination of the study area to make a professional evaluation of all **historic** and cultural properties within the area.
- (3) Copies. Once the study is completed, a copy shall be provided to the SHPO and any parties expressing an interest in the study area.

k. National Register submissions.

- (1) Nominations to the National Register. All properties under GSA's jurisdiction or control determined eligible for inclusion in the National Register by the Keeper shall be nominated to the National Register. The RHPO shall oversee preparation of the necessary National Register nomination forms and provide them to the FPO who shall examine the nomination forms for completeness and accuracy. The FPO shall be

responsible for signing and transmitting the materials to the Keeper of the National Register.

(2) Formal determinations by the Keeper. If the RHPO and the SHPO disagree on the eligibility of a property, or if an interested party raises a question concerning its eligibility, the RHPO shall request a determination of eligibility from the Keeper of the National Register in accordance with 36 C.F.R. § 60.9.

(3) Protect building pending final determination. When GSA, the SHPO, the Council, the Keeper of the National Register, or the public disagree on the eligibility of a building, GSA will make a reasonable effort, pending a final determination from the Keeper of the National Register, to protect the building and to preserve its character and architectural-defining features according to the recommended approaches set forth in the Secretary's Standards. The intent is to maintain architectural character that may contribute to the eligibility of the building for the National Register and design cohesiveness that contributes to asset value.

4. Long-term preservation planning.

a. Building Preservation Plan. The BPP is a comprehensive database of building reports developed for the analysis, management and treatment of GSA's **historic** buildings. The BPP computer program was developed for GSA to create standardized individual building plans, comparable to HSRs, in a database format enabling easy access and updating by GSA staff. Information provided in the BPP includes descriptions and images of original and current building conditions, documentation on building alterations over time, CAD-generated floor plans color coded to show the relative significance of interior and exterior spaces, inventories of original materials, and descriptions of **historic** material deficiencies and recommended treatments.

(1) BPPs and HSRs provide the basis for GSA compliance with Federal preservation standards in the development of architectural and engineering studies, such as Building Engineering Reports, seismic studies, Program Development Studies, and Fire and Life Safety reports.

Study recommendations must respond to the zoning that has been established in the BPP. All alternatives must be considered that will minimize or prevent adverse effects upon preservation zones.

(2) BPPs and HSRs help GSA manage its buildings by:

(a) Encouraging context-sensitive design that respects the architectural merit and material integrity of all buildings;

(b) Discouraging inappropriate repairs and alterations that may diminish a building's **historic** integrity and asset value; and

(c) Promoting employee and tenant agency commitment to the proper care of GSA's **historic** buildings.

(3) GSA shall prepare a BPP for each Register or Register-Eligible Property under its jurisdiction or control. BPPs shall be prepared in accordance with BPP Guidelines, as issued by the Center for **Historic** Buildings, and professional standards for HSRs and similar building-specific preservation plans and handbooks, as issued by the Department of the Interior, American Society for Testing and Materials and the Association for Preservation Technology.

(4) BPP content. BPP contents include identifying information such as building names (**historic** and current), address and GSA building number; real estate data such as occupiable and gross square footage; construction dates, building history, significance, appearance as built, alterations, and National Register designation status; images and descriptions of significant spaces and materials; preservation zoning (graphic and descriptive) establishing the relative significance of exterior areas and interior spaces to guide future treatment; photographic and narrative documentation on the existing condition of **historic** materials; and analysis of treatment options and recommendations for remedying material deficiencies, restoring historically significant spaces and addressing major rehabilitation issues. Similar information is provided in GSA's existing (hard copy) HSRs.

(5) Basic Building Preservation Plan. To facilitate GSA compliance with

Federal laws governing alteration of **historic** property affected by Federal activity, regardless of ownership, notwithstanding the availability of comparable guidance, basic BPPs for owned and leased buildings shall include, at a minimum:

(a) Summary history describing the building's original and subsequent uses, principal owners and occupants, physical evolution, and notable events associated with, or having occurred at, the building;

(b) **Historic** and architectural investigation describing original and existing conditions of the site, exterior, interior spaces, site-specific art, and furnishings integral with the original building design;

(c) Statement of significance assessing the building's architectural merit and integrity, **historic** significance and eligibility for the National Register, according to the National Register criteria;

(d) Photographs showing the existing, and to the extent possible, original appearance of the exterior (all facades) and significant interior spaces; and

(e) Preservation zoning delineating the architectural hierarchy of interior and exterior spaces to guide restoration and rehabilitation.

(6) Comprehensive Building Preservation Plan. For GSA-owned **historic** buildings and **historic** buildings in which GSA or GSA's client agency is a principal tenant and holds a lease interest of 15 years or more, notwithstanding the availability of comparable guidance, a Comprehensive BPP will be prepared, including, in addition to the basic BPP components:

(a) Materials conservation analysis evaluating existing **historic** material conditions, diagnosing causes of observed deterioration and damage and describing the advantages and disadvantages of alternative treatments, including that of no action;

(b) Photographs of all exterior facades, courtyards and significant interior spaces, including circulation, ceremonial space, original executive offices, and special use spaces; detail views of all entrances and all entrance

lobbies; and representative views of secondary circulation areas, standard offices, and other rehabilitation zone spaces; and

(c) Detailed recommendations for conservation, restoration and rehabilitation, including technical procedures for the repair and maintenance of **historic** materials and general guidance for addressing code, engineering and other deficiencies having a significant potential impact on the building's viability or **historic** integrity.

(7) Building Preservation Plan format. Building-specific plans and studies may exceed BPP requirements and include additional information needed for a particular building or project, but must be created in BPP electronic format so that all relevant documents can be integrated into the BPP database. Regional Section 110 compliance must include an active program to develop BPPs for all **historic** buildings and to convert non-electronic preservation planning documents, such as HSRs, to the BPP format for online access and inventory-wide reporting.

(8) Building Preservation Plan submission and review. BPPs shall be circulated concurrently to the RHPO and the FPO for review and comment. Progress drafts shall also be circulated for comment to the Building Manager and others having an intimate knowledge of the building. BPPs being prepared in compliance with a Memorandum of Agreement (**MOA**) shall be submitted to the SHPO and other interested parties as stipulated in the agreement. Reports that have been approved by the RHPO and the FPO shall become a binding management plan for the property. From time to time, it may become necessary to amend an existing approved BPP to reflect changes that have occurred since completion of the BPP. Such amendments shall be developed in accordance with the BPP guidelines. Amended BPPs originally prepared in compliance with an MOA shall be provided to the SHPO, the Council and other consulting parties, as stipulated in the MOA.

(9) Building Preservation Plan timing. BPPs shall be completed prior to planning substantial rehabilitation or capital investment.

(10) Data accuracy. To keep information concerning existing conditions,

alterations and recommended treatments accurate and consistent with current professional standards, annual regional programming for building studies will include provisions for updating BPPs at periodic intervals not to exceed ten years. Initial priority will be given to creating BPPs for GSA buildings for which BPPs are not yet available and updating BPPs for buildings for which major alterations are planned.

(11) Qualification standards and quality control. BPPs will be prepared only by firms meeting the Secretary of the Interior's Standards for Preservation Professionals and demonstrating appropriate experience to assess and provide guidance on buildings of the type, scale and complexity being addressed in the BPP. GSA review of any preservation studies must be performed by individuals who meet or exceed the Secretary of the Interior's qualification standards.

(12) Building Preservation Plan training. User guides, training and help programs will be made readily available to GSA staff and contract design teams to facilitate their ability to use and appropriately update information provided in the BPP.

5. Promoting the use of **historic** buildings.

a. Promoting the use of Federal **historic** properties. In managing real property, including Federal buildings and real property that has been excessed for disposal, GSA must take affirmative steps to identify and manage **historic** properties in ways that promote their preservation. Under Executive Order 13287, GSA is required to work with State and local governments and the private sector to promote economic development and heritage tourism through the use and interpretation of GSA **historic** buildings.

b. Leasing of Federal **historic** property for non-Federal use (outleasing).

(1) GSA is responsible for seeking adaptive use of **historic** properties not currently needed for Federal agency purposes. See Section 111 of NHPA, 16 U.S.C. § 470h-3.

(2) Solicitation and selection procedures for leasing GSA-controlled **historic** property for non-Federal use under Section 111 of NHPA shall give preference, among financially and operationally viable alternatives, to uses offering the best possible preservation of the property and to lessees demonstrating financial capability and commitment, based on past experience, to meeting Federal preservation goals. Lessee selection for leases that include architecturally significant spaces originally intended for public use shall also take into consideration the extent to which proposed use(s) will provide continued public access to such spaces.

(3) All leases shall contain such terms and conditions as necessary to ensure the use of the property in a manner consistent with Federal preservation standards. Leases shall be for the minimum term commensurate with the purpose of the lease, taking into account the financial obligations of the lessee and other appropriate factors, generally not exceeding 60 years except under unusual circumstances dictated by the stewardship needs of the particular property, and in no case exceeding 99 years.

(4) The RHPO shall be consulted in the development of **historic** building lease solicitations, requests for qualifications and use, marketing strategies, and selection criteria. Any resulting lease shall be executed only after review and approval by the RHPO, the Regional Counsel and the Portfolio Manager or Portfolio Manager's designee for consistency with GSA's legal, financial and stewardship goals and responsibilities.

(5) A sublease, assignment, amendment, or encumbrance of any lease issued under Section 111 authority may be made only with the written approval of the RHPO, the Regional Counsel and the Portfolio Manager or Portfolio Manager's designee. The lease may contain provisions authorizing the lessee to sublease the premises, in whole or in part, provided the uses prescribed in the original lease are not violated. Subleases shall not serve to relieve the sublessor or the sublessee from any liability nor diminish GSA's authority provided for under the approved lease.

c. Property acquisition. In making decisions concerning the acquisition of

buildings, structures and other real property for Federal use, whether by purchase, lease or exchange, GSA must give priority to the use of **historic** properties, provided such use is compatible with their preservation. See Section 110(a)(1) of NHPA, PBCUA and Executive Order 13006. Agency space expansion needs should be met, whenever economically and operationally feasible, through continued use of GSA-controlled **historic** buildings, supplemented by newly constructed additions or annexes.

d. Leasing for Federal use. In compliance with NHPA and Executive Order 13006, when space in Government-owned **historic** buildings is not available, GSA will give first consideration for acquisition of leased space to **historic** buildings that may be available for Federal use in accordance with the requirements of 41 C.F.R. § 102-78.60.

e. Declarations of excess. Program officials responsible for predisposal studies and other activities leading to agency declaration of excess determinations shall notify the RHPO at the earliest opportunity that GSA is initiating excess procedures. GSA real property and personal property excess proposals must be reviewed by the RHPO prior to initiating retention/disposal, adaptive use, public-private partnership, or other studies or actions that may lead to transfer or sale. The RHPO shall promptly notify the FPO and advise regional staff and management of compliance issues, risks or community interests that should be taken into account in evaluating retention/disposal options. During this pre-decisional period, prior to conclusion of studies or actions that might indicate GSA commitment to a specific course of action or decision, the RHPO shall notify the SHPO and, if applicable, the Council that GSA is contemplating disposal if any Register and/or Register-Eligible Property is involved, and shall afford the SHPO and the Council a reasonable opportunity to comment upon the action before a decision is made.

6. Actions affecting **historic** buildings.

a. Tenant alterations and delegated buildings. GSA is responsible for, and cannot delegate, its obligation to comply with applicable laws and regulations relating to the identification and protection of **historic**

properties. GSA shall review proposed undertakings in delegated buildings for compliance with NHPA and NEPA. All required determinations and compliance submittals are the responsibility of GSA.

b. Project planning. During planning for any GSA action, including site selection, new construction, repair and renovation of existing facilities, leasing new facilities, termination of leases, demolition or other modification of facilities, and real estate transactions, GSA must take into account the potential effects of the action on **historic** properties. Programming for required preservation planning documents, studies and recordation must be integrated into regional and national program procedures for capital investment, recurring repairs and alteration, maintenance, project development, site acquisition, and studies leading to declarations of excess and other real estate decisions so that preservation alternatives are not precluded. See Sections 106, 110(a)(2), 110(f), 110(k), 110(l), and 111 of NHPA, and government-wide regulations issued by the Council. In addition, NEPA imposes consistent but independent requirements.

(1) Consideration of community interests. The importance of buildings as cultural and economic resources within the community must be considered. The degree of community interest in a building must play a part in GSA's early and ongoing decision-making process.

(2) Use of Building Preservation Plans and **Historic** Structure Reports. BPPs and available HSRs will be used in planning all actions potentially affecting **historic** properties. Any design and construction work within a **historic** building must take into account the preservation zoning established in the BPP or HSR. Additions and annexes must respect, to the extent possible, the hierarchy of spaces established in the BPP. Effort will also be made to maintain **historic** lobbies and other ceremonial spaces in active public use.

(3) Protection of National **Historic** Landmarks. Every effort will be made to maintain the viability of NHLs, to keep them in active use and to preserve the qualities that contribute to their significance.

(4) Application of the Secretary's Standards to buildings of unconfirmed or debatable merit. GSA will encourage GSA staff and contract project teams to plan all projects, particularly projects affecting buildings in which there is substantial public interest, regardless of National Register status, according to the general principles of compatible and well-integrated design contained in the Secretary's Standards. The general intent of these principles is to preserve architectural merit and cohesiveness, principles GSA supports as beneficial in maintaining asset quality and value. The Secretary's Standards complement other GSA and GSA-endorsed design guidelines, such as the PBS Facilities Standards, the Whole Building Design Guide and action-specific guides developed by GSA's Office of the Chief Architect.

c. Coordination of GSA's compliance. The RHPO will coordinate GSA's compliance with applicable government-wide regulations. Depending on the nature of the project or program and its likely effects on **historic** properties, compliance may involve carrying out one or more of the following actions:

(1) No undertaking. Determining that the project or program is not a Federal undertaking for purposes of Section 106 of NHPA, and documenting this determination;

(2) Federal undertaking. Determining that the project or program is an undertaking, and complying with the requirements of 36 C.F.R. Part 800 in a timely and properly documented manner;

(3) Implementing agreements. Implementing the terms of an MOA or other agreement negotiated pursuant to 36 C.F.R. Part 800;

(4) Use of **historic** properties. Giving priority to the proper use of **historic** properties for program purposes, in accordance with Section 110(a)(1) of NHPA and PBCUA, and documenting this prioritization;

(5) Documentation of **historic** properties. Documenting **historic** properties subject to destruction or alteration by the project or program in accordance with Section 110(b) of NHPA, after proper compliance with

Section 106 of NHPA has been accomplished;

(6) Adaptive use of **historic** properties. Pursuant to Section 111 of NHPA, exploring adaptive use alternatives for **historic** properties under GSA control that are not needed for current or projected agency purposes;

(7) Design review. In compliance with 36 C.F.R. Part 800, reviewing project designs for conformance with the recommended approaches set forth in the Secretary's Standards, preserving original materials and designs to the greatest extent possible and, where necessary, pursuing alternatives for **historic** properties as prescribed in UFAS;

(9) Compliance with related laws and regulations. As applicable, complying with related laws governing cultural resources such as AIRFA, NAGPRA, ARPA, HADPA, and 36 C.F.R. Part 79; and

(10) Coordination with NEPA. Coordinating compliance with **historic** preservation requirements with review under NEPA and with proper reporting in the NEPA documents.

d. Summary compliance procedures for projects and actions affecting **historic** properties. All GSA program offices responsible for a proposed project, program or action potentially affecting cultural resources are responsible for GSA staff and contractors' compliance with the procedures described below. Actions potentially affecting **historic** properties and cultural resources include, but are not limited to, site selection, new construction, building acquisition, renovation or rehabilitation, leasing, terminating a lease, and disposal of surplus property.

(1) Planning stage. At the initial stage of planning, the responsible program office shall notify the RHPO of the proposed action, with sufficient documentation to enable the RHPO to understand the project and its likely effects. Programs and individuals responsible for design and construction projects affecting **historic** properties must submit all building repair, alteration and rehabilitation proposals for each building to the RHPO for review and comment. The RHPO or the RHPO's designated representative must be included in all in-house design teams and in

oversight of design by A/E firms under contract.

(2) Implementation of recommendations by the FPO or the RHPO.

Program offices shall carry out the recommendations of the FPO or the RHPO with regard to any studies, analyses, meetings, or negotiations necessary to achieve compliance.

(3) Final project decisions. Final decisions regarding projects, programs or commitment of funds (other than for planning) involving physical changes to **historic** properties will not be made until the RHPO has notified the program office that compliance with all pertinent legal requirements has been achieved.

(4) Assessment of effects. When a building is being considered for alterations, a qualified preservation architect, architectural conservator or other appropriate specialist will be retained to guide design development, beginning with an assessment of the project's anticipated effects on significant spaces, features and materials listed in the BPP or HSR. If no BPP or HSR exists, the architect will confer with the RHPO regarding the identification of significant spaces, materials and features.

(5) Avoidance of adverse effects. In planning alterations and selecting alternatives, every effort will be made to avoid, or if unavoidable, to minimize, adverse effects on **historic** buildings and other cultural resources.

(6) Locational planning. Long-term planning for agency relocation, expansion or other alternatives to fulfill new space requirements or changing space requirements will consider available **historic** properties, giving priority, to the greatest extent feasible, to reuse of GSA-owned **historic** properties, particularly NHLs, monumental buildings representing the Federal public building legacy and significant community landmarks. GSA shall consult with the SHPO early in the study of alternatives so that opportunities to use **historic** properties are not foreclosed and will seek the assistance of the SHPO, local preservation organizations and other appropriate groups to identify **historic** properties potentially meeting GSA space requirements. Lease and site solicitations shall reference the

requirements of NHPA and Executive Order 13006 and encourage offers of **historic** property by providing **historic** property owners flexibility, to the extent feasible, in meeting GSA's space requirements.

(7) Leased and acquired building space alterations. Consultation regarding initial space alterations and subsequent changes to leased or recently acquired space in **historic** buildings shall be carried out in accordance with the consultation procedures for alterations to GSA-owned **historic** property.

(8) Relocation of **historic** structures to another location. Structures or other **historic** properties will be moved to another location only if there is no prudent and feasible way to preserve them in place, and then moved only after compliance with 36 C.F.R. Part 800.

(9) Use of qualified professionals. Only qualified preservation professionals shall prepare plans for the maintenance, repair, stabilization, restoration, rehabilitation, reuse, or interpretation of an **historic** property.

(10) Compatibility of new design and alterations to **historic** properties. New structures, additions, alterations, landscaping, and other physical changes to **historic** properties will be designed and constructed to be compatible in form, scale, color, materials, texture, detailing, placement, and orientation with **historic** properties and their setting(s).

(11) **Historic** building additions and annexes. Additions will be planned to provide, to the extent feasible, continued public use of and access to **historic** public entrances, lobbies and ceremonial spaces.

(12) Adaptive use. Changes undertaken to accommodate new uses will be designed and implemented in a manner that provides, to the greatest extent possible, that **historic** properties remain occupied, viable and architecturally intact. Changes affecting monumental public buildings or major community landmarks will be planned to provide, to the extent possible, continued public access to significant public spaces.

(13) Supervision by professionals during construction. An archeologist shall be on-site or on-call during construction to prevent damage to known archeological resources, to assist in identifying archeological resources discovered during construction and to resolve unanticipated challenges associated with archeological discoveries or artifact recovery. An historical architect or architectural conservator shall be on-site or on-call during construction to prevent damage to **historic** materials, to oversee the proper execution of approved preservation design solutions and to resolve challenges raised by unanticipated conditions potentially affecting **historic** materials and design.

(14) Contracting Officer responsibilities. The Contracting Officer (**CO**) shall have the responsibility and authority to halt any construction activities should **historic**, prehistoric, archeological, or paleontological resources be exposed or should unanticipated conditions arise that prevent GSA from honoring a commitment under an MOA or from executing a project as agreed in Section 106 compliance review. Construction activities endangering such resources shall remain halted pending investigation and, as applicable, recovery in accordance with 36 C.F.R. Part 800 and the requirements of NAGPRA.

(15) Contractor qualifications. Program offices responsible for procuring contractors to perform work on or affecting **historic** building materials or architecturally significant spaces will hire only qualified firms and individuals to perform work requiring specialized preservation skills.

(16) Added responsibility of the contractor. Contractors shall be required under the contract document(s) to halt construction activities immediately and notify the CO, archeologist and/or architectural historian if historical, prehistorical, archeological, or paleontological resources are discovered during the course of such construction. The CO shall brief the contractor on these provisions prior to the start of construction.

(17) Protection of **historic** properties during construction or vacancy. Contractors shall be required to ensure that **historic** materials are protected during construction. The contractor shall ensure that materials temporarily removed for later reinstallation are properly labeled,

transported and stored securely to prevent damage or loss. **Historic** buildings will be secured and monitored during construction activity to minimize the risk of accidental damage by fire, structural failure or other means. The contractor and responsible GSA oversight staff shall minimize the risk of vandalism or theft of **historic** materials or architectural features during construction or vacancy by instituting appropriate security measures.

7. Participation by interested parties.

a. Section 106 of NHPA requires GSA to provide opportunities for the public to participate in the processes established by these procedures. Public participation requires, at a minimum:

(1) Obtaining any information that individuals, organizations, universities, agencies, tribal governing bodies, and others may have to assist GSA in carrying out its responsibilities under Federal preservation laws and regulations.

(2) Making documents, materials and other data available, to the extent possible, concerning the undertaking and the nature of its effect on **historic** and cultural properties.

b. Involving interested parties in the review processes established in this Order through the normal public notification processes provided for in 36 C.F.R. Part 800 and, as applicable, NEPA. Sufficient time shall be allowed in project development to:

(1) Involve interested parties early enough in the study of alternatives that comments and information provided by the interested parties can be included in GSA's consideration of alternatives;

(2) Involve interested parties at appropriate intervals throughout the development of major projects or actions to facilitate their participation in the sequence of decisions or incremental actions that together determine the effect of the undertaking; and

(3) Provide adequate notification time to provide interested parties a

reasonable opportunity to participate in the proposed undertaking.

8. Determination of effect.

- a. General. The RHPO shall apply the Council's Criteria of Effect to determine the effect of an undertaking on Register or Register-Eligible Property, in consultation with the SHPO and, as applicable, official representatives of Native American Tribes having an interest in properties located within the undertaking's APE.
- b. Undertakings consistent with Building Preservation Plan or **Historic Structures Report**. After the RHPO has verified the undertaking's conformance with the BPP or HSR, project documentation shall be provided to the SHPO for review. If the RHPO determines that the project is not consistent with BPP or HSR recommendations but can be modified to do so, the RHPO or the RHPO's representative shall assist the project team or program office in revising the project proposal to conform to the BPP or HSR recommendations.
- c. Undertakings not consistent with Building Preservation Plan recommendations. If the SHPO and, at its discretion, the Council, determine that a proposed undertaking is not in conformance with BPP or HSR recommendations, GSA shall, if possible without substantively compromising GSA's mission or critical project goals, revise the proposed undertaking to make it conform to BPP or HSR recommendations. If revising the proposed project approach cannot be accomplished reasonably, the RHPO shall proceed with compliance procedures for adverse effects, in accordance with 36 C.F.R. Part 800, with the goal of negotiating mutually acceptable mitigation measures to conclude Section 106 compliance for the project with an MOA.
- d. Determination of no effect. When it is determined that an undertaking will not affect Register or Register-Eligible Property, the RHPO shall provide documentation to support the finding to the SHPO. Representatives of Native Americans with interest in the properties within the APE shall be informed of the effect determination concurrently. Unless the SHPO objects to the finding of "no effect" within 30 days, or other

objections are raised, GSA may proceed with the undertaking.

e. Determination of no adverse effect. If it is determined that there will be an effect on a Register or Register-Eligible Property, the RHPO, the SHPO and any official representative of Native Americans with interest in the properties within the APE shall apply the Criteria of Effect to determine whether or not the effect will be potentially adverse.

f. No adverse effect determinations. If it is determined that the effect will not be adverse, documentation to support this determination will be sent to the SHPO and, where required, the Native American representative. The RHPO shall submit documentation to support the determination of no adverse effect (see 36 C.F.R. § 800.11), along with the SHPO's and the Native American representative's comments, if any, through the FPO to the Council. Unless the Council responds to the FPO pursuant to 36 C.F.R. § 800.6(a), GSA may proceed with the undertaking without further consultation.

g. Determination of adverse effect. If it is determined that an undertaking has the potential to adversely effect Register or Register-Eligible Property or if the SHPO objects to a GSA finding of "no adverse effect," the RHPO shall prepare the necessary documentation to be submitted to the SHPO, and at its discretion, the Council, in the form of a Preliminary Case Report (36 C.F.R. § 800.11). The FPO must concur on regional findings and GSA's position with respect to the determination.

h. Relationship to NEPA review process. Compliance with the procedures stated in this Order does not necessarily constitute compliance with NEPA, which includes a number of procedures and provisions that differ from those set forth in NHPA, such as consideration of traditional Native American sites and land features that do not necessarily meet National Register eligibility criteria. The statutory provisions of NEPA must also be complied with. NHPA regulations encourage agencies to combine NEPA and NHPA processes to the extent that duplication of effort can be reduced; however, the inclusion of a section dealing with **historic** preservation in an EIS does not automatically constitute compliance with this Order.

(1) Whenever a GSA undertaking will affect a Register or Register-Eligible Property, and trigger NEPA compliance responsibility, the RHPO shall initiate consultation with the Council as follows:

(i) Environmental Impact Statement required. When a GSA undertaking requires the preparation of an EIS, the Council may be notified through the draft EIS (see 36 C.F.R. § 800.8). The draft EIS discusses, to the extent possible at the time of its issuance, the results of historic and cultural surveys concerning the undertaking's APE, the effect of the undertaking on all identified historic and cultural properties and the appropriate documentation necessary to fulfill the requirements set forth in 36 C.F.R. § 800.11. When the draft EIS is to constitute notification to the SHPO and, at its discretion, the Council, the transmittal shall be sent concurrently to the FPO, and the letter of notification shall clearly State that the draft EIS is being submitted to request the comments of the SHPO and the Council in accordance with the procedures and instructions set forth in 36 C.F.R. § 800.4.

(ii) Environmental Impact Statement not required. When a GSA undertaking does not require the preparation of an EIS, but the undertaking could affect Register or Register-Eligible Property, the notification requirement shall be met by providing the SHPO and the Council with timely documentation on alternative actions under consideration and their potential effects on **historic** or cultural property, in accordance with the procedures and instructions set forth in 36 C.F.R. § 800.4.

(2) Environmental Impact Statement preparation. Any final EIS prepared pursuant to Section 102(2)(c) of NEPA, in addition to identifying the adverse effects, shall discuss alternatives considered and describe the mitigation plans developed in consultation with the SHPO, representatives of Native Americans and the Council, as applicable.

9. Study of alternatives.

a. General. Whenever it is determined that an undertaking may have an

adverse effect on a Register or Register-Eligible Property, the RHPO shall, in consultation with the SHPO and, at its discretion, the Council, conduct a study of alternatives pursuant to 36 C.F.R. § 800.6(b) to avoid the potentially adverse effect. Where a property has significance based on Native American religious or cultural rites and practices, GSA shall confer with representatives of the affected Native Americans to determine appropriate measures to protect and preserve Native American religious or cultural rites and practices.

(1) Codes and standards. Acknowledging that **historic** buildings cannot always achieve new construction standards without substantial expense and loss of integrity, GSA will encourage innovative solutions that reduce the cost and architectural impact of making buildings safe, comfortable and accessible. Project design teams will be encouraged to apply codes flexibly, in cooperation with the RHPO, GSA fire safety engineers and other technical experts, using the risk assessment principles outlined in the *GSA Fire Safety Retrofitting Manual*, assessing actual risk within the building-specific context. Project teams will be encouraged to explore appropriate alternative approaches provided in codes, guidelines and standards such as NFPA 914 Fire Protection for **Historic** Properties, HUD Guideline on Fire Ratings of Archaic Materials, UFAS, and P100 Facilities Standards.

(2) Architectural barriers. In making decisions about handicapped accessibility under ABA and ADA, GSA must consider whether planned measures may threaten or destroy the significance of a **historic** property. If so, alternative measures can be employed. See Section 4.17 of UFAS.

b. Memorandum of Agreement. When a proposed undertaking has the potential to adversely effect **historic** and cultural properties, GSA shall take no action that could limit the consideration of alternatives and mitigation measures until the consultation process has been concluded. The execution of an MOA among the Council, the SHPO and GSA normally concludes the consultation process (36 C.F.R. § 800.6). Alternatives that shall be considered include, but are not limited to:

(1) Alternative locations. Carrying out the proposed undertaking at a

location that will eliminate or substantially reduce the potential to adversely effect **historic** and cultural properties;

(2) Alternative undertakings. Conducting other undertakings, actions, activities, or programs with similar objectives that could avoid or substantially reduce the potential to adversely effect **historic** and cultural properties;

(3) Alternative designs. Implementing other plans, designs or concepts with similar objectives that could avoid or substantially reduce the potential to adversely effect **historic** and cultural properties;

(4) No action alternative. Taking no action; and

(5) Avoidance of adverse effects. To the extent that it is prudent and feasible to do so, avoidance of adverse effects shall be the preferred option for all GSA undertakings.

c. Programmatic Agreements. An alternative to the standard Section 106 process is to execute a Programmatic Agreement (**PA**) with the SHPO and the Council. In a PA, GSA establishes an alternative, usually streamlined, review process for a particular program, type of activity or group of activities. A BPP can be the basis of such an agreement. All PAs must be reviewed and concurred in by the FPO.

d. Adverse effect. GSA shall give no assistance to, nor shall it collaborate with, any agency or private party with the intent to avoid Section 106 requirements by either intentionally causing an adverse effect or failing to prevent a potential adverse effect, unless and until consultation with the SHPO and the Council justifies such action.

e. Anticipatory demolition. GSA is responsible for discouraging the demolition of **historic** properties by other agencies and private parties in anticipation of obtaining a GSA lease or other benefit. See Section 110(k) of NHPA.

f. Archeological sites. GSA must regulate the excavation or other disturbance of archeological sites, consult with Native American groups

about the treatment of any traditional cultural or religious properties that may be present and protect Native American cultural items. See Section 110(a)(1) of NHPA, ARPA and its implementing regulations (43 C.F.R. Part 7), AIRFA, and NAGPRA and its implementing regulations (43 C.F.R. Part 10).

(1) Project planning - design. Design scopes and estimates for repair and alteration projects not large enough to warrant an Environmental Assessment (**EA**) or an EIS, but that will result in ground disturbance, must include appropriate research as required by NHPA, NEPA and related laws to determine the likelihood that significant archeological artifacts are present in the area to be disturbed (Phase I). Projects may need to include provisions for analysis of sample areas to verify the presence of artifacts, should Phase I research trigger the need for on site testing (Phase II). Preliminary consultation with GSA's RHPO, Regional Environmental Officer and the SHPO is advised to learn what may already be known about a site.

(2) Project planning - construction. Construction scopes of work for projects involving a likely discovery of artifacts must include provisions stipulating the responsibility of GSA's archeological consultant team to advise GSA on the potential National Register eligibility of any discovered artifacts. In consultation with the SHPO (and, at its discretion, the Council), GSA determines whether the significance of the discovery merits further artifact recovery, analysis and curation. The goals and methodology of recovery, interpretation and curation are laid out in an MOA.

(3) Public benefit. Projects involving recovery of archeological, paleontological or prehistoric artifacts should include provisions so that the public can benefit from the recovery effort and research findings. Project scopes of work and budgets for recovery, analysis and reporting should include interpretation and dissemination of research findings and, when possible, provisions for public display of appropriate artifacts. Interpretive measures include, but are not limited to, educational videos, indoor and outdoor exhibits and publication of findings on the Internet or professional journals. Contract archeologists will be encouraged to publish

their findings, provided that GSA is acknowledged and the RHPOs and the FPO are given an opportunity for review and comment prior to publication.

(4) Recovery. All contracts for recovery of archeological artifacts under GSA projects, whether owned or leased, shall require production of an illustrated report of findings, including narratives describing the findings and their significance in laymen's terms and professional terms, for posting on the Internet or inclusion in appropriate publications. Any use by the contractor overseeing recovery or analysis of such artifacts or disseminating information gained as a result of the recovery effort shall credit GSA as sponsor of the recovery, the owner and, as applicable, the curator of the artifacts. Archeological recovery analysis reports shall be prepared in accordance with Federal regulations and shall describe the significance of the research findings and how they contribute to the body of knowledge on the location and broader **historic** or cultural themes explored in the study.

(5) Transport and storage. Artifacts recovered by the Federal government remain Federal property in perpetuity. Responsibility for the care of certain specialized artifacts may be transferred to other appropriate Federal agencies, such as the U.S. Navy, which specializes in underwater archeology. Project plans (and budgets) for recovery should also include specific long-term recommendations for curation, whether by GSA or other appropriate entities, such as academic institutions, State historical organizations or non-profit research groups. At a minimum, agreements for long-term curation should provide that the artifacts will be secure from theft or damage and maintained in a climate-controlled environment complying with Department of the Interior standards for storage and curation of archeological artifacts.

(6) Archeological artifacts. Archeological collections in GSA's custody shall be managed properly by appropriately equipped institutions, according to the Secretary of the Interior's standards for storage and curation of archeological artifacts, and in compliance with ARPA, 16 U.S.C. §§ 470ii-mm, and HADPA, 16 U.S.C. §§ 469-469c-2. In addition, GSA must repatriate Native American cultural items in such collections to

related Native American groups (see 36 C.F.R. Part 79, Sections 5-7 of NAGPRA and 43 C.F.R. Part 10.

(a) Archeological collections. Archeological collections shall be preserved, inventoried, interpreted, and curated in accordance with 36 C.F.R. Part 79. The FPO and the appropriate RHPO shall maintain current inventories identifying all artifacts, their locations and other information as required by Federal regulations. Information regarding GSA's archeological collections and archeological research findings funded under GSA projects shall be made readily available to researchers and the general public through the Internet and other appropriate means.

(b) Public access to collections. Provisions shall be made to provide access to GSA's archeological collection by researchers and appropriate institutions for public benefit. Procedures shall be established and permanent records maintained to provide for the security and proper care of artifacts removed from storage for such purposes. The RHPO shall be responsible for carrying out the recovery, transport, storage and loaning of archeological artifacts for research or exhibit purposes in compliance with Federal regulations and GSA policy.

g. Vessels and underwater artifacts. GSA is responsible for Section 106 compliance associated with potentially significant Federal underwater artifacts, such as sunken Civil War vessels, which may be affected by Federal undertakings such as coastal dredging. Underwater artifacts are typically transferred to the Navy and curated by the Navy Historical Center or other appropriate institutions. MOAs and PAs delineating responsibilities associated with identification, analysis and curation may involve Federal and non-Federal participants, including the agency whose activities resulted in the discovery and is responsible for identification and reclamation, GSA (as Federal owner of the artifacts), the Federal agency assuming ownership (if other than GSA), the curating entity, the SHPO, the Council (if involved), and any interested parties, such as local historical groups. Agreements should include provisions for reassigning curatorial responsibilities, should unforeseen events prevent the curating organization from meeting the agreement's requirements.

h. Excess property.

(1) Property excessed by other agencies. As required by 41 C.F.R. § 102-78.70, Federal agencies must satisfy their compliance responsibilities concerning property excessed by them prior to transfer or sale by GSA. GSA shall accept no real or personal property excessed by another Federal agency, nor act as an agent for the transfer or sale, unless the excessing agency has accomplished its responsibilities pursuant to NHPA and Executive Order 11593, or has made other arrangements acceptable to GSA to do so. In accordance with the requirements of Section 2(f) of Executive Order 11593, GSA is responsible for incorporating provisions for the protection of the historic property into the transfer or sale of such property. GSA's procedures for handling transfers shall support preservation goals and long-term stewardship.

(2) **Historic** property transfers. In accordance with Sections 106 and 111 of NHPA and as further provided in 41 C.F.R. § 102-78.65, GSA's procedures governing the transfer of historic properties shall incorporate all available authorities to support preservation goals for long-term stewardship. In furtherance of Section 111 of NHPA, 41 C.F.R. § 102-78.65 requires that Federal agencies 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. Prior to initiating disposal actions for underutilized or poorly performing historic buildings, in accordance with 41 C.F.R. § 102-79.60 and GSA's Portfolio Strategy, GSA shall explore appropriate financial remedies such as return on investment pricing, marketing of vacant space to other Federal agencies and supplementing a predominantly Federal use with leasing to non-Federal tenants. Disposal program staff shall coordinate with the RHPO to integrate provisions for the protection of historic property into the transfer or sale procedures and documents, in conformance with the requirements of Section 2(f) of Executive Order 11593. Such provisions shall include mitigation of any adverse effects to Register and Register-Eligible Property that might occur as a direct or indirect result of the transfer. Transfer provisions shall also address the process for determining use, if not yet determined, with priority given to

uses that minimize loss of historic features and materials and maintain continued public access to buildings designed for public use.

(a) Federal legacy properties. Transfers involving NHLs, monumental properties, architectural icons, buildings engendering high community interest, and other **historic** properties, raising Federal legacy concerns must be structured to give preference, among financially viable alternatives, to architecturally compatible uses and financially capable entities able to demonstrate a commitment to Federal stewardship goals.

(b) Covenant enforcement and unanticipated changes. To the extent possible, transfer agreements involving highly significant **historic** property shall include provisions for monitoring compliance with transfer covenants and for third party review of unanticipated changes in use or major alterations subsequent to transfer. Transfers of highly significant **historic** property, e.g., monumental buildings designed for a high degree of public access, shall include provisions encouraging continued public access and long-term stewardship in the unanticipated event of subsequent transfer or change of use. The National Park Service shall be invited to serve as a third party reviewer for transfers involving GSA-controlled NHLs.

i. Abandoned property. The Administrator of GSA is authorized to make such contracts and provisions for the preservation, sale or collection of any property, or the proceeds thereof, which may have been wrecked, abandoned or become derelict, if the Administrator considers the contracts and provisions to be in the interest of the Federal Government and the property is within the jurisdiction of the United States and should come to the United States (40 U.S.C. § 1309). This authority, which extends to certain underwater properties, must be exercised in coordination with ARPA, HADPA, GSA Order FSS 2800.23, entitled "Treasure Trove Contracts," dated January 15, 1987, and the Abandoned Shipwreck Act of 1987, Pub. L. 100-298, 102 Stat. 432, 43 U.S.C. §§ 2101-2106 (**ASA**). See Sections 4 and 6(d) of ASA and its implementing guidelines (55 Fed. Reg. 50116 (1990)).

10. Development of project compliance documentation.

a. General. Solicitations and scopes of work for feasibility studies, site acquisition, lease acquisition, Program Development Studies, design and construction, and other activities governed by Federal preservation laws and directives will include provisions so that appropriate analyses of alternatives and preparation of compliance review submission material is completed in a timely manner by qualified professionals and that preservation considerations are fully integrated into GSA project development processes, decisions and actions potentially affecting **historic** buildings or material of cultural significance.

b. Compliance submission requirements.

(1) Submission materials developed for external review in compliance with Section 106 of NHPA and related laws will be prepared only by individuals meeting the Department of the Interior's qualifications for preservation professionals who are able to demonstrate successful experience on comparable preservation projects. Documentation prepared internally by GSA may be developed only by or under the supervision of individuals meeting these criteria so that preservation issues are properly identified and that GSA maintains professional credibility in external reviews.

(2) Section 106 compliance submission material will be developed concurrently with project development by individuals actively engaged in all discussions and reviews leading to actions or decisions that may have an effect on **historic** buildings as defined in 36 C.F.R. Part 800. Project managers and team members will be provided guidance for integrating the compliance process and GSA's options analysis so that the process serves to inform GSA decisions, rather than document decisions already made.

(3) Except under special circumstances warranting otherwise, compliance reports should be submitted as part of each A/E design submission required under the project scope of work. Design submissions for projects in or affecting **historic** buildings shall not be considered complete and acceptable for invoicing until a complete compliance report has been received and accepted.

c. Compliance submission reports. Submission reports for Section 106 compliance and other external reviews will be formatted to focus specifically and concisely on relevant preservation issues, options, implications, and GSA's recommended alternatives balancing preservation goals and GSA mission needs. Submissions will provide all information required for reviewers to identify and understand the potential effects of the project or decisions on **historic** properties and how GSA proposes to reconcile preservation goals and project mission requirements. Project submissions concerning design, construction, lease-development, new construction, and other physical changes to **historic** buildings will include, at a minimum:

- (1) A narrative identifying all preservation issues and options, justifying GSA's recommended alternatives;
- (2) Relevant research on as-built conditions, building evolution and affected **historic** properties, as necessary, to explain or justify the proposed project approach;
- (3) Photographs of existing conditions at each affected location, or representative locations, if conditions are identical or similar;
- (4) Elevations, plans and detail drawings or visual simulations showing the appearance of proposed preservation design solutions; and
- (5) A statement, signed by the qualified individual preparing the report, certifying that the report fulfills the Section 106 compliance submission requirements, including, for rehabilitation projects, that the proposed design is consistent with the recommended approaches set forth in the Secretary's Standards.

d. Compliance submission package. Submissions to the SHPO, the Council and other external review organizations must include a cover letter, signed by the RHPO, stating GSA's determination of effect with a brief rationale summarizing key preservation issues, solutions and approaches.

11. Mitigation measures.

a. When alternatives to avoid adversely effecting **historic** and cultural properties are determined by the consulting parties not to be prudent and feasible, GSA shall develop measures to minimize the potentially adverse effect. Measures to mitigate adverse effects to Register or Register-Eligible Property shall be developed in consultation with the SHPO and, at its discretion, the Council. Where a property has significance based on Native American religious and cultural rites and practices, the RHPO shall confer with representatives of the affected Native Americans to determine appropriate measures to protect and preserve Native American religious or cultural rites and practices. Such measures may include, but are not limited to:

- (1) Modifying the proposed undertaking through redesign, reorientation of the project site and other changes;
- (2) Limiting the magnitude or extent of the proposed undertaking or identified alternatives;
- (3) Rectifying the potentially adverse effects by rehabilitation, repairing or restoring the affected resources;
- (4) Compensating for the potentially adverse effects, for example, through the recovery and interpretation of scientific, prehistoric, **historic**, and archeological data; and
- (5) Minimizing potential adverse effects over time through preservation procedures occurring throughout or subsequent to the undertaking.

b. Mitigation measures shall be appropriate to the nature and importance of the **historic** and cultural properties in question. In all cases, there will be preservation of such physical features as may be prudent and feasible.

c. Required Documentation. Whenever a GSA action may result in destruction or alteration of an **historic** property, GSA is responsible for documenting the property prior to its alteration. When the property is an archeological site, GSA is also responsible for notifying the National Park Service (see HADPA and Section 110(b) of NHPA).

12. Architectural artifact salvage.

- a. **Historic** architectural features in significant areas as defined in the BPP, HSR and guidelines promulgated by the Department of the Interior shall be preserved and retained in place. When removal of original materials is unavoidable, they must be appropriately labeled, protected, recorded, transported, and placed into secure storage.
- b. Specifications for removal and storage should include stipulations requiring that care be taken during removal, crating, transport, and placement into storage to avoid damaging the salvaged artifacts. Unless exceptional size or other unusual material considerations warrant, all salvaged materials must be packed and crated during transport and storage and labeled both inside and outside the crate in such a manner that the labels can be easily viewed when crates are placed in storage. Crates should be labeled on sides likely to be exposed when crates are stacked.
- c. Transmittal records identifying all items, their materials, size, weight, the specific location(s) from which they were removed and to which they are being placed into storage shall be required under the construction contract and submitted by the Contractor to the RHPO and the FPO prior to transport and delivery of the items. A permanent record of all such items and their storage or reinstallation locations shall be maintained by the RHPO, with a current copy provided to the FPO as the inventory is updated.
- d. The inventory record shall identify the items and specific locations from which they were removed; the age (design, fabrication dates) of the items, if known; date of removal and storage or reinstallation location; and contact information identifying program offices and individuals having direct responsibility for the security and care of the items.
- e. If future reinstallation within the space for which the features were designed is impossible or unlikely, an effort will be made to install the salvaged architectural artifacts in an appropriate location elsewhere in the

building, or in another, comparable GSA **historic** building, provided that such installation is consistent with the recommended approaches set forth in the Secretary's Standards.

13. Discoveries. Should **historic** or cultural properties be discovered after compliance with this Order and 36 C.F.R. § 800.6 is complete, and during the implementation of an undertaking, then GSA shall notify the SHPO/THPO, any Indian tribe or Native Hawaiian organization that might attach religious and cultural significance to the affected property and the Council within 48 hours of discovery. The notification shall describe GSA's assessment of the National Register eligibility of the property and proposed actions to resolve the adverse effects. If the SHPO/THPO and any Indian tribe or Native Hawaiian organization that might attach religious and cultural significance to the affected property agree that such property is of value solely for its scientific, prehistoric, historic, or archeological data, GSA may instead comply with the procedures for notifying, reporting and consulting with the Secretary of the Interior in accordance with Section 4(a) of HADPA (16 U.S.C. § 469a-2) and concurrently notify the Council, the SHPO and/or the THPO and the Indian tribe or Native Hawaiian organization, and provide them with a report on the actions within a reasonable time after they are completed.

14. Disaster management and emergency response. The FPO, in cooperation with the RHPOs and appropriate regional program officials, shall establish procedures to prevent, to the extent possible, and minimize harm to **historic** buildings and cultural artifacts as a result of natural disasters, human error and deliberate acts of destruction. These procedures shall include emergency communication, identifying national, regional and back up contacts; emergency recovery of architectural materials and artifacts in the event of fire or other property damage; accelerated review and compliance procedures for emergency stabilization and repair; and standard contract clauses to require that emergency repairs preserve **historic** materials, features and design, to the extent possible. Disaster Management and Emergency Response procedures shall be consistent with Federal security standards and the salvage and protection measures recommended by the Heritage Emergency National Task Force. GSA facilities management staff and

project teams shall be provided emergency contacts, online assistance and written guidance, including specific procedures for GSA properties and appropriate instructional material such as the *Emergency Response and Salvage Wheel* distributed by the Federal Emergency Management Agency, Heritage Preservation Program in the Department of Homeland Security.

15. Cultural property other than real property. Cultural resources other than real property include furnishings and artwork integral with the building's original architectural design, archeological artifacts and underwater artifacts.

a. Identification and evaluation report. A report shall be prepared for each item or group of items under GSA's control that contributes to the significance of Register and Register-Eligible Property, or any other cultural artifact independently eligible for listing on the National Register. Cultural artifact reports shall be prepared in accordance with current professional standards and applicable Federal directives for the class of objects or materials affected and shall contain, at a minimum:

- (1) Property inventory and evaluation of merit and **historic** integrity;
- (2) Summary of existing condition(s); and
- (3) Recommendations for short and long-term care.

b. SHPO Notification. Whenever a cultural resource will be affected by GSA activity, GSA will notify the SHPO, through the RHPO, of the undertaking and propose ways to avoid or minimize adverse effects upon the resource.

c. Furnishings. **Historic** furnishings designed as an integral element in architecturally significant spaces shall be preserved, protected and retained in place. Such furnishings within GSA-controlled property shall be considered property of the Government, under GSA care, and shall not be removed, should a change of tenancy or use occur, unless GSA, in consultation with the SHPO, determines that removal is necessary to preserve furnishings due to changes in program or other requirements or

the extreme fragility or advanced deterioration of the item. Furnishings so removed must be appropriately labeled, protected, recorded, and placed into secure storage. A permanent record of all such furnishings and their storage or reinstallation locations shall be maintained by the RHPO, with a current copy provided to the FPO as the inventory is updated. The inventory record shall describe and date the design and/or fabrication of the item, identify the building and specific location from which it was removed, specify the date of removal and storage or reinstallation location, and provide contact information identifying program offices and individuals having direct responsibility for the security and care of the item. If future reinstallation within the space for which the furnishings were designed is impossible or unlikely, an effort will be made to install the item in an appropriate location elsewhere in the building, or in another, comparable **historic** building controlled by GSA, provided that such installation is consistent with the recommended approaches set forth in the Secretary's Standards.

d. Site-specific art. Site-specific art that is a Contributing Feature in a **historic** property shall be preserved, protected, and maintained in its original location. Conservation or removal of artwork shall be carried out in accordance with GSA policy, as directed in the GSA Fine Arts Desk Guide. Interpretation and appropriate education shall be provided to educate tenants and visitors concerning architecturally integral or site-specific art threatened as a result of changing social or political perspectives, separation between the artwork and the audience for whom it was designed, deterioration or damage not easily rectified, or for other reasons.

APPENDICES

APPENDIX A. NATIONAL **HISTORIC** PRESERVATION ACT OF 1966,
AS AMENDED

APPENDIX B. 36 C.F.R. PART 800

APPENDIX C. 41 C.F.R. PART 102-78

APPENDIX D. EXECUTIVE ORDER 11593

APPENDIX E. EXECUTIVE ORDER 13006

APPENDIX F. EXECUTIVE ORDER 13287

APPENDIX G. RHPO POSITION DESCRIPTION

APPENDIX A. NATIONAL **HISTORIC** PRESERVATION ACT OF 1966, AS AMENDED

National **Historic** Preservation Act of 1966 as amended through 2000

National **Historic** Preservation Act of 1966, As amended through 2000
[With annotations]

[This Act became law on October 15, 1966 (Public Law 89-665; 16 U.S.C. 470

et seq.). Subsequent amendments to the Act include 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, Public Law 102-575, Public Law 103-437, Public

Law 104-333, Public Law 106-113, Public Law 106-176, Public Law 106-208,

and Public Law 106-355. This description of the Act, as amended, tracts the language of the United States Code except that (in following common usage) we refer to the "Act"(meaning the Act, as amended) rather than to the "subchapter" or the "title" of the Code.This description also excludes some of the notes found in the Code as well as those sections of the amendments dealing with completed reports. Until the Code is updated through the end of the 106th Congress, the Code citations for Sections 308

and 309 are speculative.]

AN ACT to Establish a Program for the Preservation of Additional **Historic** Properties throughout the Nation, and for Other Purposes.

Section 1

[16 U.S.C. 470 Short title of the Act]

(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, aesthetic, 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 insure 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.

Section 2

[16 U.S.C. 470-1 Declaration of policy of the 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 organizations 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 organizations 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** built 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(a) 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, archaeology, engineering, and culture. Notwithstanding section 1125(c) of Title 15 [of the U.S. Code], buildings and structures on or eligible for inclusion on the National Register of **Historic** Places (either individually or as part of a **historic** district), or designated as an individual landmark or as a contributing building in a **historic** district by a unit of State or local government, may retain the name historically associated with the building or structure.

[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 December 12, 1980 [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) [16 U.S.C. 461 to 467]; 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.

[Criteria for National Register and National **Historic** Landmarks and regulations]

(2) The Secretary in consultation with national **historic** and archaeological 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, 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.

[Nominations to the National Register]

(3) Subject to the requirements of paragraph (6), any State which is carrying out a program approved under subsection (b) of this section, shall nominate to the Secretary properties which meet the criteria promulgated under subsection (a) of this section for inclusion on the National Register. Subject to paragraph (6), any property nominated under

this paragraph or under section 110 (a)(2) of this Act 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).

[Nominations from individuals and local governments]

(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) of this section. 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).

[Appeals of nominations]

(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.

[Owner participation in nomination process]

(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 an **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 an **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 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 [16 U.S.C. 470h-2], the Act of June 27, 1960 (16 U.S.C. 469c), and the Archaeological 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) of this section and for the allocation of funds pursuant to section 103 (c) of this Act [16 U.S.C. 470c(c)].

[Review threats to eligible and listed properties and recommend action]

(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.

[16 U.S.C. 470a(b) 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

[Designation of the State **Historic** Preservation Officer (SHPO)]

(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;

[Designation of the State Review Board]

(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.

[Review of State programs]

(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 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) of this section;

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

(i) Federal undertakings that may affect **historic** 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.

[Arrangements with nonprofit organizations]

(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.

[Approval of existing programs]

(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 October 30, 1992 [the date of the enactment of the National **Historic** Preservation Act Amendments of 1992].

[Contracts or cooperative agreements with State **Historic** Preservation Officers]

(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.

(iv) Maintenance of historical and archaeological data bases.

(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 subsection (b)(1) and (2) of this section;

(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.

[16 U.S.C. 470a(c) 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 this Act [16 U.S.C. 470c(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 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) of this section;

(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.

[Participation of certified local governments in National Register nominations]

(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 subsection (a) of this subsection. 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 subsection (a) of this section. 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 provision of section 103 (c) of this Act [16 U.S.C. 470c(c)], and shall carry out any responsibilities delegated to it in accordance with such terms and conditions as the Secretary deems necessary or advisable.

[Definitions]

(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 this subsection.

[16 U.S.C. 470a(d) Establish program and regulations to assist 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.

[Indian Tribes may assume 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) of this section, 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 of this Act), 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; and

(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) of this section; and

(E) based on satisfaction of the conditions stated in subparagraphs (A), (B), (C), and (D), the Secretary approves the plan.

(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) of this Act 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) of this section 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.

(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 of this Act, 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 may be eligible for listing in the National Register]

(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.

(B) In carrying out its responsibilities under section 106 of this Act, 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) of this section, 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.

[16 U.S.C. 470a(e) 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.

[Grants to the National Trust]

(2) The Secretary may administer grants to the National Trust for **Historic** Preservation in the United States, chartered by Act of Congress approved October 26, 1949 (63 Stat. 927) [16 U.S.C. 468], consistent with the purposes of its charter and this Act.

[Direct grants for threatened National **Historic** Landmarks, demonstration projects, training, and displacement prevention]

(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 of this Act. 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.

[Grants or loans to Indian tribes and non-profit ethnic or minority organizations for preserving cultural heritage]

(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 of this Act.

[Grants for religious properties]

(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.

[Direct grants to Indian tribes and Native Hawaiian organizations]

(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.

[Direct grants to Micronesia, Marshall Islands, and Palau]

(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 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.

[16 U.S.C. 470a(f) Prohibition on compensating intervenors]

(f) No part of any grant made under this section may be used to compensate any person intervening in any proceeding under this Act.

[16 U.S.C. 470a(g) Guidelines for Federal agency responsibilities]

(g) In consultation with the Advisory Council on **Historic**

Preservation, the Secretary shall promulgate guidelines for Federal agency responsibilities under section 110 of this Act.

[16 U.S.C. 470a(h) Preservation standards for federally owned properties]

(h) Within one year after December 12, 1980 [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.

[16 U.S.C. 470a(i) Technical advice]

(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.

[16 U.S.C. 470a(j) Develop and implement a comprehensive preservation education and training program]

(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; and

(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.

Section 102

[16 U.S.C. 470b(a) Grant requirements]

(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) [16 U.S.C. 460l-4];

(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) of this Act 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 of 1986 [Title 26 of the U.S. Code].

[16 U.S.C. 470b(b) Waiver for the National Trust]

(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.

[16 U.S.C. 470b(c*) State limitation on matching]

[*Technically, subsection (c) was repealed and replaced by two subsection "d"s]

(c*) No State shall be permitted to utilize the value of real property obtained before October 15, 1966 [the date of approval of this Act], in meeting the remaining cost of a project for which a grant is made under this Act.

[16 U.S.C. 470b(d) Availability of funds]

(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.

[16 U.S.C. 470b(e) Administrative Costs]

(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) of this Act.

Section 103

[16 U.S.C. 470c(a) Basis for apportionment of grants]

(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.

[16 U.S.C. 470c(b) Apportionment basis, notice, reapportionment, etc.]

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

[16 U.S.C. 470c(c) Requirements for certified local government pass-through subgrants]

(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) of this Act 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) of this Act.

[16 U.S.C. 470c(d) Guidelines for State distribution to certified local governments]

(d) The Secretary shall establish guidelines for the use and distribution of funds under subsection (c) of this section to insure 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) of this section, 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) Insured loans for National Register]

(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.

[16 U.S.C. 470d(b) Requirements]

(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.

[Interest rates]

The Secretary shall consult with the Secretary of the Treasury regarding the interest rate of loans insured under this section.

[16 U.S.C. 470d(c) Limitation on loan authority]

(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 of this Act and subsections (g) and (i) of this section, as in effect on December 12, 1980 [the date of the enactment of the Act], but which has not been appropriated for any purpose.

[16 U.S.C. 470d(d) Assignability and effect]

(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.

[16 U.S.C. 470d(e) Method of payment for losses]

(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.

[16 U.S.C. 470d(f) Protection of Government's financial interests; foreclosure]

(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) of this section.

[16 U.S.C. 470d(g) Conveyance of foreclosed property]

(g) (1) In any case in which a **historic** property is obtained pursuant to subsection (f) of this section, 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 of this Act 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.

[16 U.S.C. 470d(h) Fees]

(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 of this Act 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.

[16 U.S.C. 470d(i) Loans to be considered non-Federal funds]

(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.

[16 U.S.C. 470d(j) Appropriation authorization]

(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) of this section.

[16 U.S.C. 470d(k) Prohibition against acquisition by Federal Financing Bank]

(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 Recordkeeping]

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.

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 Exemption of White House, Supreme Court, and Capitol]

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 Establishment of Historic Preservation Fund; authorization for appropriations]

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 and \$150,000,000 for fiscal year 1981 and \$150,000,000 for each of fiscal years 1982 through 2005, 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. 1338), and/or under section 7433(b) of Title 10, 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) Donations to the Secretary]

(a) In furtherance of the purposes 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.

[16 U.S.C. 470h-1(b) Expenditure of donated funds]

(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.

[16 U.S.C. 470h-1(c) Transfer of funds donated for the National Park Service]

(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.

Section 110

[16 U.S.C. 470h-2(a) Federal agencies' responsibility to preserve and use **historic** properties]

(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 in accordance with Executive Order No. 13006, issued May 21, 1996 (61 Fed. Reg. 26071). 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) of this Act, any preservation, as may be necessary to carry out this section.

[Each Federal agency to establish a preservation program to protect and preserve **historic** properties in consultation with others]

(2) Each Federal agency shall establish (unless exempted pursuant to Section 214) of this Act, 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 of this Act and gives special consideration to the preservation of such values in the case of properties designated as having National significance;

(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 of this Act

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

(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 Grave Protection and Repatriation Act (25 U.S.C. 3002(c)).

[16 U.S.C. 470h-2(b) Recordation of historic properties prior to demolition]

(b) Each Federal agency shall initiate measures to assure that where, as a result of Federal action or assistance carried out by such agency, an **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) of this Act, in the Library of Congress or with such other appropriate agency as may be designated by the Secretary, for future use and reference.

[16 U.S.C. 470h-2(c) Designation of Federal agency preservation officers]

(c) The head of each Federal agency shall, unless exempted under section 214 of this Act, 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) of this Act.

[16 U.S.C. 470h-2(d) Conduct of agency programs consistent with Act]

(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.

[16 U.S.C. 470h-2(e) Transfer of surplus Federal historic properties]

(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.

[16 U.S.C. 470h-2(f) Federal undertakings affecting National Historic Landmarks]

(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.

[16 U.S.C. 470h-2(g) Preservation activities as an eligible project cost]

(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.

[16 U.S.C. 470h-2(h) Preservation awards program]

(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 achievements 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.

[16 U.S.C. 470h-2(i) Applicability of National Environmental Policy Act]

(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 [42 U.S.C. 4321 et seq.], 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.

[16 U.S.C. 470h-2(j) Disaster waivers]

(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.

[16 U.S.C. 470h-2(k) Anticipatory demolition]

(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 of this Act, 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.

[16 U.S.C. 470h-2(l) Documentation of Federal agency Section 106 decisions]

(l) With respect to any undertaking subject to section 106 of this Act 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 pursuant to regulations issued by the Council,

the head of such agency shall document any decision made pursuant to section 106 of this Act. The head of such agency may not delegate his or her responsibilities pursuant to such section. Where a section 106 of this Act 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) Lease or exchange of Federal historic property]

(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 an **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 insure the preservation of the **historic** property.

[16 U.S.C. 470h-3(b) Use of proceeds]

(b) The proceeds of any lease under subsection (a) of this section 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.

[16 U.S.C. 470h-3(c) Management contracts]

(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) Each Federal agency is to protect historic resources through professionalism of employees and contractors]

(a) 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.

(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 October 30, 1992, [the date of enactment of the 1992 Amendments to 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.

[Maintaining permanent databases]

(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.

[16 U.S.C. 470h-4(b) Secretary to promulgate guidelines to owners about protecting and preserving **historic** resources]

(b) 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;

[Encourage protection of Native American cultural items and properties]

(3) encourage the protection of Native American cultural items (within the meaning of section 2 (3) and (9) of the Native American Grave 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

[Conduct archeological excavations to meet Federal standards, allow access

to artifacts for research, consult with Indian tribe or Native Hawaiian organization if related items likely]

(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 Grave Protection and Repatriation Act (25 U.S.C. 3002(a)(2) (B) and (C)), given notice to and consult with such Indian tribe or Native Hawaiian organization.

Section 113

[16 U.S.C. 470h-5(a) Study to report ways to control illegal trafficking in]

(a) 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.

[16 U.S.C. 470h-5(b) Consultation]

(b) In conducting the study described in subsection (a) of this section 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.

[16 U.S.C. 470h-5(c) Report]

(c) Not later than 18 months after October 30, 1992 [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) of this section.

[16 U.S.C. 470h-5(d) Funding authorization]

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

TITLE II

Section 201

[16 U.S.C. 470i(a) 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, designated 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.

[16 U.S.C. 470i(b) Designees]

(b) Each member of the Council specified in paragraphs (2) through (8) other than (5) and (6) of subsection (a) of this section 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.

[16 U.S.C. 470i(c) Term of office]

(c) Each member of the Council appointed under paragraph (1), and under paragraphs (9) through (11) of subsection (a) of this section 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 insure 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 elected office but not in excess of four years. An appointed member may not serve more than two terms. An appointed member whose term has expired shall serve until that member's successor has been appointed.

[16 U.S.C. 470i(d) Vacancies]

(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 December 12, 1980 [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 December 12, 1980 [the enactment of the National **Historic** Preservation Act Amendments of 1980].

[16 U.S.C. 470i(e) Vice Chairman]

(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.

[16 U.S.C. 470i(f) Quorum]

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

Section 202

[16 U.S.C. 470j(a) Duties of Council]

(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.

[16 U.S.C. 470j(b) Annual and special reports]

(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.

Section 203

[16 U.S.C. 470k Information from agencies]

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 of the Act; and each such department, bureau, agency, board, commission, office, independent establishment 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 Compensation of members]

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 performance 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) Executive Director]

(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.

[16 U.S.C. 470m(b) General Counsel and other attorneys]

(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.

[16 U.S.C. 470m(c) Appointment and compensation of staff]

(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].

[16 U.S.C. 470m(d) Appointment and compensation of additional personnel]

(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 [chapter 51 and subchapter III of chapter 53 of Title 5, U.S. Code].

[16 U.S.C. 470m(e) Expert and consultant services]

(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].

[16 U.S.C. 470m(f) Financial and administrative services]

(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 by 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 erroneous payments

(5 U.S.C. 5514(b)) 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. 1513(d), 1514) shall apply to appropriations of the Council: And provided further, That the Council shall not be required to prescribe such regulations.

[16 U.S.C. 470m(g) Use of funds, personnel, facilities, and services]

(g) Any Federal agency may provide the Council, with or without reimbursement as may be agreed upon by the Chairman and the agency, 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. Any funds provided to the Council pursuant to this subsection must be expended by the end of the fiscal year following the fiscal year in which the funds are received by the Council. 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) International Centre for the Study of the Preservation and Restoration of Cultural Property; authorization]

(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.

[16 U.S.C. 470n(b) Members of official delegation]

(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.

[16 U.S.C. 470n(c) Authorization for membership payment]

(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 Transfer of personnel, funds, etc. to the Council]

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 [Pub. L. 94-422, September 28, 1976].

Section 208

[16 U.S.C. 470p Rights of Council employees]

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.

Section 209

[16 U.S.C. 470q Exemption from Federal Advisory Committee Act]

The Council is exempt from the provisions of the Federal Advisory Committee Act (86 Stat. 770), and the provisions of subchapter II of chapter 5 and chapter 7, of Title 5 [U.S. Code] [the Administrative Procedure Act (80 Stat. 381)] shall govern the operations of the Council.

Section 210

[16 U.S.C. 470r Direct Submission to the Congress]

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 Regulations for Section 106; local government participation]

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 of this Act which affect such local governments.

Section 212

[16 U.S.C. 470t(a) Council appropriation authorization]

(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 \$4,000,000 for each fiscal year 1997 through 2005.

[16 U.S.C. 470t(b) Concurrent submission of budget to Congress]

(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 Natural Resources and the Senate Committee on Energy and Natural Resources.

Section 213

[16 U.S.C. 470u Reports from Secretary at request of Council]

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 Exemptions for Federal activities from provisions of the Act]

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.

Section 215

[16 U.S.C. 470v-1 Reimbursement from State and local agencies, etc.]

Subject to applicable conflict of interest laws, the Council may receive reimbursements from State and local agencies and others pursuant to agreements executed in furtherance of the purposes of this Act.

TITLE III

Section 301

[16 U.S.C. 470w 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 of this Act.

(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) of this 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** archaeology, 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) of this Act, 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) of this Act.

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

(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 Kupuna O Hawai'i Nei, an organization incorporated under the laws of the State of Hawaii.

Section 302

[16 U.S.C. 470w-1 Authority to expend funds for purposes of this Act]

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.

Section 303

[16 U.S.C. 470w-2(a) Donations to Secretary; money and personal property]

(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.

[16 U.S.C. 470w-2(b) Donations of less than fee interests in real property]

(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(a) Confidentiality of the location of sensitive **historic** resources]

(a) 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** resources; or

(3) impede the use of a traditional religious site by practitioners.

[16 U.S.C. 470w-3(b) Access Determination]

(b) 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) of this section, 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.

[16 U.S.C. 470w-3(c) Consultation with the Advisory Council]

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

Section 305

[16 U.S.C. 470w-4 Attorneys' fees]

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) National Center for the Building Arts]

(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;

(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.

[16 U.S.C. 470w-5(b) Cooperative agreement]

(b) The cooperative agreement referred to in subsection (a) of this section shall include provisions which

(1) make the site available to the Committee referred to in subsection (a) of this section 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.

[16 U.S.C. 470w-5(c) Grants to Committee]

(c) The Secretary is authorized and directed to provide matching grants-in-aid to the Committee referred to in subsection (a) of this section 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.

[16 U.S.C. 470w-5(d) Site renovation]

(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.

[16 U.S.C. 470w-5(e) Annual report]

(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.

[16 U.S.C. 470w-5(f) Definition of "building arts"]

(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, archaeology, 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) Effective date of regulations]

(a) 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.

[16 U.S.C. 470w-6(b) Congressional disapproval of regulations]

(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.

[16 U.S.C. 470w-6(c) Inaction by Congress]

(c) 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.

[16 U.S.C. 470w-6(d) Definitions]

(d) 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.

[16 U.S.C. 470w-6(e) Effect of Congressional inaction]

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

Section 308

[16 U.S.C. 470w-7(a) National historic light station program]

(a) In order to provide a national **historic** light station program, the Secretary shall

- (1) collect and disseminate information concerning **historic** light stations, including **historic** lighthouses and associated structures;
- (2) foster educational programs relating to the history, practice, and contribution to society of **historic** light stations;
- (3) sponsor or conduct research and study into the history of light stations;
- (4) maintain a listing of **historic** light stations; and
- (5) assess the effectiveness of the program established by this section regarding the conveyance of **historic** light stations.

[16 U.S.C. 470w-7(b) Conveyance of Historic Light Stations]

(b) (1) Not later than 1 year after the date of the enactment of this section, the Secretary and the Administrator shall establish a process and policies for identifying, and selecting, an eligible entity to which a **historic** light station could be conveyed for education, park, recreation, cultural, or **historic** preservation purposes, and to monitor the use of such light station by the eligible entity.

(2) The Secretary shall review all applications for the conveyance of a **historic** light station, when the agency with administrative jurisdiction over the **historic** light station has determined the property to be 'excess property' as that term is defined in the Federal Property Administrative Services Act of 1949 (40 U.S.C. 472(e)), and forward to the Administrator a single approved application for the conveyance of the **historic** light station. When selecting an eligible entity, the Secretary shall consult with the State **Historic** Preservation Officer of the State in which the **historic** light station is located.

(3) (A) Except as provided in subparagraph (B), the Administrator shall convey, by quitclaim deed, without consideration, all right, title, and interest of the United States in and to the **historic** light station, subject to the conditions set forth in subsection (c) after the Secretary's selection of an eligible entity. The conveyance of a **historic** light station under this section shall not be subject to the provisions of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11301 et seq.)

or section 416(d) of the Coast Guard Authorization Act of 1998 (Public Law 105-383).

(B) (i) **Historic** light stations located within the exterior boundaries of a unit of the National Park System or a refuge within the National Wildlife Refuge System shall be conveyed or sold only with the approval of the Secretary.

(ii) If the Secretary approves the conveyance of a **historic** light station referenced in this paragraph, such conveyance shall be subject to the

conditions set forth in subsection (c) and any other terms or conditions the Secretary considers necessary to protect the resources of the park unit or wildlife refuge.

(iii) If the Secretary approves the sale of a **historic** light station referenced in this paragraph, such sale shall be subject to the conditions set forth in subparagraphs (A) through (D) and (H) of subsection (c)(1) and subsection (c)(2) and any other terms or conditions the Secretary considers necessary to protect the resources of the park unit or wildlife refuge.

(iv) For those **historic** light stations referenced in this paragraph, the Secretary is encouraged to enter into cooperative agreements with appropriate eligible entities, as provided in this Act, to the extent such cooperative agreements are consistent with the Secretary's responsibilities to manage and administer the park unit or wildlife refuge, as appropriate.

[16 U.S.C. 470w-7(c) Terms of Conveyance]

(c) (1) The conveyance of a **historic** light station shall be made subject to any conditions, including the reservation of easements and other rights on behalf of the United States, the Administrator considers necessary to ensure that

(A) the Federal aids to navigation located at the **historic** light station in operation on the date of conveyance remain the personal property of the United States and continue to be operated and maintained by the United States for as long as needed for navigational purposes;

(B) there is reserved to the United States the right to remove, replace, or install any Federal aid to navigation located at the **historic** light station as may be necessary for navigational purposes;

(C) the eligible entity to which the **historic** light station is conveyed under this section shall not interfere or allow interference in any manner with any Federal aid to navigation, nor hinder activities required for the

operation and maintenance of any Federal aid to navigation, without the express written permission of the head of the agency responsible for maintaining the Federal aid to navigation;

(D) the eligible entity to which the **historic** light station is conveyed under this section shall, at its own cost and expense, use and maintain the **historic** light station in accordance with this Act, the Secretary of the Interior's Standards for the Treatment of **Historic** Properties, 36 CFR part 68, and other applicable laws, and any proposed changes to the **historic** light station shall be reviewed and approved by the Secretary in consultation with the State **Historic** Preservation Officer of the State in which the **historic** light station is located, for consistency with 36 CFR part 800.5(a)(2)(vii), and the Secretary of the Interior's Standards for Rehabilitation, 36 CFR part 67.7;

(E) the eligible entity to which the **historic** light station is conveyed under this section shall make the **historic** light station available for education, park, recreation, cultural or **historic** preservation purposes for the general public at reasonable times and under reasonable conditions;

(F) the eligible entity to which the **historic** light station is conveyed shall not sell, convey, assign, exchange, or encumber the **historic** light station, any part thereof, or any associated **historic** artifact conveyed to the eligible entity in conjunction with the **historic** light station conveyance, including but not limited to any lens or lanterns, unless such sale, conveyance, assignment, exchange or encumbrance is approved by the Secretary;

(G) the eligible entity to which the **historic** light station is conveyed shall not conduct any commercial activities at the **historic** light station, any part thereof, or in connection with any associated **historic** artifact conveyed to the eligible entity in conjunction with the **historic** light station conveyance, in any manner, unless such commercial activities are approved by the Secretary; and

(H) the United States shall have the right, at any time, to enter the

historic light station conveyed under this section without notice, for purposes of operating, maintaining, and inspecting any aid to navigation and for the purpose of ensuring compliance with this subsection, to the extent that it is not possible to provide advance notice.

(2) Any eligible entity to which a **historic** light station is conveyed under this section shall not be required to maintain any Federal aid to navigation associated with a **historic** light station, except any private aids to navigation permitted under section 83 of title 14, United States Code, to the eligible entity.

(3) In addition to any term or condition established pursuant to this subsection, the conveyance of a **historic** light station shall include a condition that the **historic** light station, or any associated **historic** artifact conveyed to the eligible entity in conjunction with the **historic** light station conveyance, including but not limited to any lens or lanterns, at the option of the Administrator, shall revert to the United States and be placed under the administrative control of the Administrator, if

(A) the **historic** light station, any part thereof, or any associated **historic** artifact ceases to be available for education, park, recreation, cultural, or **historic** preservation purposes for the general public at reasonable times and under reasonable conditions which shall be set forth in the eligible entity's application;

(B) the **historic** light station or any part thereof ceases to be maintained in a manner that ensures its present or future use as a site for a Federal aid to navigation;

(C) the **historic** light station, any part thereof, or any associated **historic** artifact ceases to be maintained in compliance with this Act, the Secretary of the Interior's Standards for the Treatment of **Historic** Properties, 36 CFR part 68, and other applicable laws;

(D) the eligible entity to which the **historic** light station is conveyed, sells, conveys, assigns, exchanges, or encumbers the **historic** light

station, any part thereof, or any associated **historic** artifact, without approval of the Secretary;

(E) the eligible entity to which the **historic** light station is conveyed, conducts any commercial activities at the **historic** light station, any part thereof, or in conjunction with any associated **historic** artifact, without approval of the Secretary; or

(F) At least 30 days before the reversion, the Administrator provides written notice to the owner that the **historic** light station or any part thereof is needed for national security purposes.

[16 U.S.C. 470w-7(d) Description of Property]

(d) (1)(1) The Administrator shall prepare the legal description of any **historic** light station conveyed under this section. The Administrator, in consultation with the Commandant, United States Coast Guard, and the Secretary, may retain all right, title, and interest of the United States in and to any historical artifact, including any lens or lantern, that is associated with the **historic** light station and located at the light station at the time of conveyance. Wherever possible, such historical artifacts should be used in interpreting that station. In cases where there is no method for preserving lenses and other artifacts and equipment in situ, priority should be given to preservation or museum entities most closely associated with the station, if they meet loan requirements.

(2) Artifacts associated with, but not located at, the **historic** light station at the time of conveyance shall remain the personal property of the United States under the administrative control of the Commandant, United States Coast Guard.

(3) All conditions placed with the quitclaim deed of title to the **historic** light station shall be construed as covenants running with the land.

(4) No submerged lands shall be conveyed under this section.

[16 U.S.C. 470w-7(e) Definitions]

(e) For purposes of this section:

(1) The term "Administrator" shall mean the Administrator of General Services.

(2) The term "historic light station" includes the light tower, lighthouse, keepers dwelling, garages, storage sheds, oil house, fog signal building, boat house, barn, pumphouse, tramhouse support structures, piers, walkways, underlying and appurtenant land and related real property and improvements associated therewith; provided that the `historic light station' shall be included in or eligible for inclusion in the National Register of **Historic** Places.

(3) The term "eligible entity" shall mean:

(A) any department or agency of the Federal Government; or

(B) any department or agency of the State in which the **historic** light station is located, the local government of the community in which the **historic** light station is located, nonprofit corporation, educational agency, or community development organization that

(i) has agreed to comply with the conditions set forth in subsection (c) and to have such conditions recorded with the deed of title to the **historic** light station; and

(ii) is financially able to maintain the **historic** light station in accordance with the conditions set forth in subsection (c).

(4) The term "Federal aid to navigation" shall mean any device, operated and maintained by the United States, external to a vessel or aircraft, intended to assist a navigator to determine position or safe course, or to warn of dangers or obstructions to navigation, and shall include, but not be limited to, a light, lens, lantern, antenna, sound signal, camera, sensor, electronic navigation equipment, power source, or other associated equipment.

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

Section 309

[16 U.S.C. 470w-8(a) Historic Light Station Sales]

(a) In the event no applicants are approved for the conveyance of a **historic** light station pursuant to section 308, the **historic** light station shall be offered for sale. Terms of such sales shall be developed by the Administrator of General Services and consistent with the requirements of section 308, subparagraphs (A) through (D) and (H) of subsection (c)(1), and subsection (c)(2). Conveyance documents shall include all necessary covenants to protect the historical integrity of the **historic** light station and ensure that any Federal aid to navigation located at the **historic** light station is operated and maintained by the United States for as long as needed for that purpose.

[16 U.S.C. 470w-8(b) Net sale proceeds]

(b) Net sale proceeds from the disposal of a **historic** light station

(1) located on public domain lands shall be transferred to the National Maritime Heritage Grant Program, established by the National Maritime Heritage Act of 1994 (Public Law 103-451) within the Department of the Interior; and

(2) under the administrative control of the Coast Guard shall be credited to the Coast Guard's Operating Expenses appropriation account, and shall be available for obligation and expenditure for the maintenance of light stations remaining under the administrative control of the Coast Guard, such funds to remain available until expended and shall be available in addition to funds available in the Operating Expense appropriation for this purpose.

There are hereby authorized to be appropriated to the Secretary of the Interior such sums as may be necessary to carry out this Act.

TITLE IV

Section 401

[16 U.S.C. 470x National initiative to coordinate and promote research, distribute information and provide training about preservation skills and technologies]

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

[16 U.S.C. 470x-1 Definitions]

For the purposes of this title

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

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

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

Section 403

[16 U.S.C. 470x-2(a) Establish a National Center for Preservation Technology and Training]

(a) 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

Nachitoches, Louisiana.

[16 U.S.C. 470x-2(b) Purposes of Center]

(b) 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.

[16 U.S.C. 470x-2(c) Programs]

(c) 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 of this Act.

[16 U.S.C. 470x-2(d) Executive Director]

(d) The Center shall be headed by an Executive Director with

demonstrated expertise in **historic** preservation appointed by the Secretary with advice of the Board.

[16 U.S.C. 470x-2(e) Assistance from Secretary]

(e) 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

[16 U.S.C. 470x-3(a) Establish a Preservation Technology and Training Board]

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

[16 U.S.C. 470x-3(b) Duties]

(b) 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.

[16 U.S.C. 470x-3(c) Membership]

(c) 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 archaeology, architecture, conservation, curation, engineering, history, **historic** preservation, landscape architecture, planning, or preservation education.

Section 405

[16 U.S.C. 470x-4(a) Grants for research, information distribution and skill training]

(a) 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.

[16 U.S.C. 470x-4(b) Grant Requirements]

(b) (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.

[16 U.S.C. 470x-4(c) Eligible applicants]

(c) 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.

[16 U.S.C. 470x-4(d) Standards]

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

[16 U.S.C. 470x-4(e) Authorization of appropriations]

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

Section 406

[16 U.S.C. 470x-5(a) Center may accept grants, donations, and other Federal funds; may enter into contracts and cooperative agreements]

(a) 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.

[16 U.S.C. 470x-5(b) Contracts and cooperative agreements]

(b) 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 of the Act.

[16 U.S.C. 470x-5(c) Authorization of appropriations]

(c) 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

[16 U.S.C. 470x-6 Improve use of existing NPS centers and regional offices]

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.

[Addendum]

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

This addendum 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 401

[16 U.S.C. 470a-1(a) International activities and World Heritage Convention]

(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.

[16 U.S.C. 470a-1(b) Nominations of properties to World Heritage List]

(b) The Secretary of the Interior shall periodically nominate proper-ties 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 nation-al 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, ease-ments, or other forms of protection). Before making any such nomina-tion, the Secretary shall notify the Committee on Natural Resources of the United States House of Representatives and the Committee on Energy and Natural Resources of the United States Senate.

[16 U.S.C. 470a-1(c) Concurrence of non-Federal property]

(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 International Federal activities affecting historic

properties]

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.

KJM

APPENDIX B. 36 C.F.R. PART 800

What follows are the Section 106 regulations, 36 CFR Part 800 ("Protection of **Historic** Properties"), of the National **Historic** Preservation Act.

36 CFR PART 800 PROTECTION OF HISTORIC PROPERTIES

Subpart A Purposes and Participants

Sec.

800.1 Purposes.

800.2 Participants in the Section 106 process.

Subpart B The Section 106 Process

800.3 Initiation of the Section 106 process.

800.4 Identification of **historic** properties.

800.5 Assessment of adverse effects.

800.6 Resolution of adverse effects.

800.7 Failure to resolve adverse effects.

800.8 Coordination with the National Environmental Policy Act.

800.9 Council review of Section 106 compliance.

800.10 Special requirements for protecting National **Historic** Landmarks.

800.11 Documentation standards.

800.12 Emergency situations.

800.13 Post-review discoveries.

Subpart C Program Alternatives

800.14 Federal agency program alternatives.

800.15 Tribal, State, and local program alternatives. [Reserved]

800.16 Definitions.

Appendix A to Part 800 Criteria for Council involvement in reviewing individual Section 106 cases

Authority: 16 U.S.C. 470s.

Subpart A Purposes and Participants

Sect. 800.1 Purposes.

(a) Purposes of the section 106 process. Section 106 of the National **Historic** Preservation Act requires Federal agencies to take into account the effects of their undertakings on **historic** properties and afford the Council a reasonable opportunity to comment on such undertakings. The procedures in this part define how Federal agencies meet these statutory responsibilities. The section 106 process seeks to accommodate **historic** preservation concerns with the needs of Federal undertakings through consultation among the agency official and other parties with an interest in the effects of the undertaking on **historic** properties, commencing at the early stages of project planning. The goal of consultation is to identify **historic** properties potentially affected by the undertaking, assess its effects and seek ways to avoid, minimize or mitigate any adverse effects on **historic** properties.

(b) Relation to other provisions of the act. Section 106 is related to other provisions of the act designed to further the national policy of **historic** preservation. References to those provisions are included in this part to identify circumstances where they may affect actions taken to meet section 106 requirements. Such provisions may have their own implementing regulations or guidelines and are not intended to be implemented by the procedures in this part except insofar as they relate to the section 106

process. Guidelines, policies, and procedures issued by other agencies, including the Secretary, have been cited in this part for ease of access and are not incorporated by reference.

(c) Timing. The agency official must complete the section 106 process "prior to the approval of the expenditure of any Federal funds on the undertaking or prior to the issuance of any license." This does not prohibit agency official from conducting or authorizing nondestructive project planning activities before completing compliance with section 106, provided that such actions do not restrict the subsequent consideration of alternatives to avoid, minimize or mitigate the undertaking's adverse effects on **historic** properties. The agency official shall ensure that the section 106 process is initiated early in the undertaking's planning, so that a broad range of alternatives may be considered during the planning process for the undertaking.

Sec. 800.2 Participants in the Section 106 process.

(a) Agency official. It is the statutory obligation of the Federal agency to fulfill the requirements of section 106 and to ensure that an agency official with jurisdiction over an undertaking takes legal and financial responsibility for section 106 compliance in accordance with subpart B of this part. The agency official has approval authority for the undertaking and can commit the Federal agency to take appropriate action for a specific undertaking as a result of section 106 compliance. For the purposes of subpart C of this part, the agency official has the authority to commit the Federal agency to any obligation it may assume in the implementation of a program alternative. The agency official may be a State, local, or tribal government official who has been delegated legal responsibility for compliance with section 106 in accordance with Federal law.

(1) Professional standards. Section 112(a)(1)(A) of the act requires each Federal agency responsible for the protection of **historic** resources, including archeological resources, to ensure that all actions taken by employees or contractors of the agency shall meet professional standards

under regulations developed by the Secretary.

(2) Lead Federal agency. If more than one Federal agency is involved in an undertaking, some or all the agencies may designate a lead Federal agency, which shall identify the appropriate official to serve as the agency official who shall act on their behalf, fulfilling their collective responsibilities under section 106. Those Federal agencies that do not designate a lead Federal agency remain individually responsible for their compliance with this part.

(3) Use of contractors. Consistent with applicable conflict of interest laws, the agency official may use the services of applicants, consultants, or designees to prepare information, analyses and recommendations under this part. The agency official remains legally responsible for all required findings and determinations. If a document or study is prepared by a non-Federal party, the agency official is responsible for ensuring that its content meets applicable standards and guidelines.

(4) Consultation. The agency official shall involve the consulting parties described in paragraph (c) of this section in findings and determinations made during the section 106 process. The agency official should plan consultations appropriate to the scale of the undertaking and the scope of Federal involvement and coordinated with other requirements of other statutes, as applicable, such as the National Environmental Policy Act, the Native American Graves Protection and Repatriation Act, the American Indian Religious Freedom Act, the Archeological Resources Protection Act, and agency-specific legislation. The Council encourages the agency official to use to the extent possible existing agency procedures and mechanisms to fulfill the consultation requirements of this part.

(b) Council. The Council issues regulations to implement section 106, provides guidance and advice on the application of the procedures in this part, and generally oversees the operation of the section 106 process. The

Council also consults with and comments to agency officials on individual undertakings and programs that affect **historic** properties.

(1) Council entry into the section 106 process. When the Council determines that its involvement is necessary to ensure that the purposes of section 106 and the act are met, the Council may enter the section 106 process. Criteria guiding Council decisions to enter the section 106 process are found in appendix A to this part. The Council will document that the criteria have been met and notify the parties to the section 106 process as required by this part.

(2) Council assistance. Participants in the section 106 process may seek advice, guidance and assistance from the Council on the application of this part to specific undertakings, including the resolution of disagreements, whether or not the Council is formally involved in the review of the undertaking. If questions arise regarding the conduct of the section 106 process, participants are encouraged to obtain the Council's advice on completing the process.

(c) Consulting parties. The following parties have consultative roles in the section 106 process.

(1) State **historic** preservation officer.

(i) The State **historic** preservation officer (SHPO) reflects the interests of the State and its citizens in the preservation of their cultural heritage. In accordance with section 101(b)(3) of the act, the SHPO advises and assists Federal agencies in carrying out their section 106 responsibilities and cooperates with such agencies, local governments and organizations and individuals to ensure that **historic** properties are taking into consideration at all levels of planning and development.

(ii) If an Indian tribe has assumed the functions of the SHPO in the section 106 process for undertakings on tribal lands, the SHPO shall participate as a consulting party if the undertaking takes place on tribal lands but affects **historic** properties off tribal lands, if requested in

accordance with Sec. 800.3(c)(1), or if the Indian tribe agrees to include the SHPO pursuant to Sec. 800.3(f)(3).

(2) Indian tribes and Native Hawaiian organizations.

(i) Consultation on tribal lands.

(A) Tribal **historic** preservation officer. For a tribe that has assumed the responsibilities of the SHPO for section 106 on tribal lands under section 101(d)(2) of the act, the tribal **historic** preservation officer (THPO) appointed or designated in accordance with the act is the official representative for the purposes of section 106. The agency official shall consult with the THPO in lieu of the SHPO regarding undertakings occurring on or affecting **historic** properties on tribal lands.

(B) Tribes that have not assumed SHPO functions. When an Indian tribe has not assumed the responsibilities of the SHPO for section 106 on tribal lands under section 101(d)(2) of the act, the agency official shall consult with a representative designated by such Indian tribe in addition to the SHPO regarding undertakings occurring on or affecting **historic** properties on its tribal lands. Such Indian tribes have the same rights of consultation and concurrence that the THPOs are given throughout subpart B of this part, except that such consultations shall be in addition to and on the same basis as consultation with the SHPO.

(ii) Consultation on **historic** properties of significance to Indian tribes and Native Hawaiian organizations. Section 101(d)(6)(B) of the act requires the agency official to consult with any Indian tribe or Native Hawaiian organization that attaches religious and cultural significance to **historic** properties that may be affected by an undertaking. This requirement applies regardless of the location of the **historic** property. Such Indian tribe or Native Hawaiian organization shall be a consulting party.

(A) The agency official shall ensure that consultation in the section

106 process provides the Indian tribe or Native Hawaiian organization a reasonable opportunity to identify its concerns about **historic** properties, advise on the identification and evaluation of **historic** properties, including those of traditional religious and cultural importance, articulate its views on the undertaking's effects on such properties, and participate in the resolution of adverse effects. It is the responsibility of the agency official to make a reasonable and good faith effort to identify Indian tribes and Native Hawaiian organizations that shall be consulted in the section 106 process. Consultation should commence early in the planning process, in order to identify and discuss relevant preservation issues and resolve concerns about the confidentiality of information on **historic** properties.

(B) The Federal Government has a unique legal relationship with Indian tribes set forth in the Constitution of the United States, treaties, statutes, and court decisions. Consultation with Indian tribes should be conducted in a sensitive manner respectful of tribal sovereignty. Nothing in this part alters, amends, repeals, interprets, or modifies tribal sovereignty, any treaty rights, or other rights of an Indian tribe, or preempts, modifies, or limits the exercise of any such rights.

(C) Consultation with an Indian tribe must recognize the government-to-government relationship between the Federal Government and Indian tribes. The agency official shall consult with representatives designated or identified by the tribal government or the governing body of a Native Hawaiian organization. Consultation with Indian tribes and Native Hawaiian organizations should be conducted in a manner sensitive to the concerns and needs of the Indian tribe or Native Hawaiian organization.

(D) When Indian tribes and Native Hawaiian organizations attach religious and cultural significance to **historic** properties off tribal lands, section 101(d)(6)(B) of the act requires Federal agencies to consult with such Indian tribes and Native Hawaiian organizations in the section 106 process. Federal agencies should be aware that frequently **historic** properties of religious and cultural significance are located on

ancestral, aboriginal, or ceded lands of Indian tribes and Native Hawaiian organizations and should consider that when complying with the procedures in this part.

(E) An Indian tribe or a Native Hawaiian organization may enter into an agreement with an agency official that specifies how they will carry out responsibilities under this part, including concerns over the confidentiality of information. An agreement may cover all aspects of tribal participation in the section 106 process, provided that no modification may be made in the roles of other parties to the section 106 process without their consent. An agreement may grant the Indian tribe or Native Hawaiian organization additional rights to participate or concur in agency decisions in the section 106 process beyond those specified in subpart B of this part. The agency official shall provide a copy of any such agreement to the Council and the appropriate SHPOs.

(F) An Indian tribe that has not assumed the responsibilities of the SHPO for section 106 on tribal lands under section 101(d)(2) of the act may notify the agency official in writing that it is waiving its rights under Sec. 800.6(c)(1) to execute a memorandum of agreement.

(3) Representatives of local governments. A representative of a local government with jurisdiction over the area in which the effects of an undertaking may occur is entitled to participate as a consulting party. Under other provisions of Federal law, the local government may be authorized to act as the agency official for purposes of section 106.

(4) Applicants for Federal assistance, permits, licenses, and other approvals. An applicant for Federal assistance or for a Federal permit, license, or other approval is entitled to participate as a consulting party as defined in this part. The agency official may authorize an applicant or group of applicants to initiate consultation with the SHPO/THPO and others, but remains legally responsible for all findings and determinations charged to the agency official. The agency official shall notify the SHPO/THPO when an applicant or group of applicants is so

authorized. A Federal agency may authorize all applicants in a specific program pursuant to this section by providing notice to all SHPO/THPOs. Federal agencies that provide authorizations to applicants remain responsible for their government-to-government relationships with Indian tribes.

(5) Additional consulting parties. Certain individuals and organizations with a demonstrated interest in the undertaking may participate as consulting parties due to the nature of their legal or economic relation to the undertaking or affected properties, or their concern with the undertaking's effects on **historic** properties.

(d) The public.

(1) Nature of involvement. The views of the public are essential to informed Federal decisionmaking in the section 106 process. The agency official shall seek and consider the views of the public in a manner that reflects the nature and complexity of the undertaking and its effects on **historic** properties, the likely interest of the public in the effects on **historic** properties, confidentiality concerns of private individuals and businesses, and the relationship of the Federal involvement to the undertaking.

(2) Providing notice and information. The agency official must, except where appropriate to protect confidentiality concerns of affected parties, provide the public with information about an undertaking and its effects on **historic** properties and seek public comment and input. Members of the public may also provide views on their own initiative for the agency official to consider in decisionmaking.

(3) Use of agency procedures. The agency official may use the agency's procedures for public involvement under the National Environmental Policy

Act or other program requirements in lieu of public involvement requirements in subpart B of this part, if they provide adequate opportunities for public involvement consistent with this subpart.

Subpart B The Section 106 Process

Sec. 800.3 Initiation of the section 106 process.

(a) Establish undertaking. The agency official shall determine whether the proposed Federal action is an undertaking as defined in Sec. 800.16(y)

and, if so, whether it is a type of activity that has the potential to cause effects on **historic** properties.

(1) No potential to cause effects. If the undertaking is a type of activity that does not have the potential to cause effects on **historic** properties, assuming such **historic** properties were present, the agency official has no further obligations under section 106 or this part.

(2) Program alternatives. If the review of the undertaking is governed by a Federal agency program alternative established under Sec. 800.14 or a programmatic agreement in existence before January 11, 2001, the agency official shall follow the program alternative.

(b) Coordinate with other reviews. The agency official should coordinate the steps of the section 106 process, as appropriate, with the overall planning schedule for the undertaking and with any reviews required under other authorities such as the National Environmental Policy

Act, the Native American Graves Protection and Repatriation Act, the American Indian Religious Freedom Act, the Archeological Resources Protection Act, and agency-specific legislation, such as section 4(f) of the Department of Transportation Act. Where consistent with the procedures

in this subpart, the agency official may use information developed for other reviews under Federal, State, or tribal law to meet the requirements of section 106.

(c) Identify the appropriate SHPO and/or THPO. As part of its initial planning, the agency official shall determine the appropriate SHPO or SHPOs to be involved in the section 106 process. The agency official shall also determine whether the undertaking may occur on or affect **historic** properties on any tribal lands and, if so, whether a THPO has assumed the duties of the SHPO. The agency official shall then initiate consultation with the appropriate officer or officers.

(1) Tribal assumption of SHPO responsibilities. Where an Indian tribe has assumed the section 106 responsibilities of the SHPO on tribal lands pursuant to section 101(d)(2) of the act, consultation for undertakings occurring on tribal land or for effects on tribal land is with the THPO for the Indian tribe in lieu of the SHPO. Section 101(d)(2)(D)(iii) of the act authorizes owners of properties on tribal lands which are neither owned by a member of the tribe nor held in trust by the Secretary for the benefit of the tribe to request the SHPO to participate in the section 106 process in addition to the THPO.

(2) Undertakings involving more than one State. If more than one State is involved in an undertaking, the involved SHPOs may agree to designate a lead SHPO to act on their behalf in the section 106 process, including taking actions that would conclude the section 106 process under this subpart.

(3) Conducting consultation. The agency official should consult with the SHPO/THPO in a manner appropriate to the agency planning process for the undertaking and to the nature of the undertaking and its effects on **historic** properties.

(4) Failure of the SHPO/THPO to respond. If the SHPO/THPO fails to respond within 30 days of receipt of a request for review of a finding or determination, the agency official may either proceed to the next step in the process based on the finding or determination or consult with the

Council in lieu of the SHPO/THPO. If the SHPO/THPO re-enters the Section

106 process, the agency official shall continue the consultation without being required to reconsider previous findings or determinations.

(d) Consultation on tribal lands. Where the Indian tribe has not assumed the responsibilities of the SHPO on tribal lands, consultation with the Indian tribe regarding undertakings occurring on such tribe's lands or effects on such tribal lands shall be in addition to and on the same basis as consultation with the SHPO. If the SHPO has withdrawn from the process, the agency official may complete the section 106 process with the Indian tribe and the Council, as appropriate. An Indian tribe may enter into an agreement with a SHPO or SHPOs specifying the SHPO's participation in the section 106 process for undertakings occurring on or affecting **historic** properties on tribal lands.

(e) Plan to involve the public. In consultation with the SHPO/THPO, the agency official shall plan for involving the public in the section 106 process. The agency official shall identify the appropriate points for seeking public input and for notifying the public of proposed actions, consistent with Sec. 800.2(d).

(f) Identify other consulting parties. In consultation with the SHPO/THPO, the agency official shall identify any other parties entitled to be consulting parties and invite them to participate as such in the section 106 process. The agency official may invite others to participate as consulting parties as the section 106 process moves forward.

(1) Involving local governments and applicants. The agency official shall invite any local governments or applicants that are entitled to be consulting parties under Sec. 800.2(c).

(2) Involving Indian tribes and Native Hawaiian organizations. The agency official shall make a reasonable and good faith effort to identify any Indian tribes or Native Hawaiian organizations that might attach

religious and cultural significance to **historic** properties in the area of potential effects and invite them to be consulting parties. Such Indian tribe or Native Hawaiian organization that requests in writing to be a consulting party shall be one.

(3) Requests to be consulting parties. The agency official shall consider all written requests of individuals and organizations to participate as consulting parties and, in consultation with the SHPO/THPO and any Indian tribe upon whose tribal lands an undertaking occurs or affects **historic** properties, determine which should be consulting parties.

(g) Expediting consultation. A consultation by the agency official with the SHPO/THPO and other consulting parties may address multiple steps in Secs. 800.3 through 800.6 where the agency official and the SHPO/THPO agree it is appropriate as long as the consulting parties and the public have an adequate opportunity to express their views as provided in Sec. 800.2(d).

Sec. 800.4 Identification of **historic** properties.

(a) Determine scope of identification efforts. In consultation with the SHPO/THPO, the agency official shall:

(1) Determine and document the area of potential effects, as defined in Sec. 800.16(d);

(2) Review existing information on **historic** properties within the area of potential effects, including any data concerning possible **historic** properties not yet identified;

(3) Seek information, as appropriate, from consulting parties, and other individuals and organizations likely to have knowledge of, or concerns with, **historic** properties in the area, and identify issues relating to the undertaking's potential effects on **historic** properties; and

(4) Gather information from any Indian tribe or Native Hawaiian organization identified pursuant to Sec. 800.3(f) to assist in identifying properties, including those located off tribal lands, which may be of religious and cultural significance to them and may be eligible for the National Register, recognizing that an Indian tribe or Native Hawaiian organization may be reluctant to divulge specific information regarding the location, nature, and activities associated with such sites. The agency official should address concerns raised about confidentiality pursuant to Sec. 800.11(c).

(b) Identify **historic** properties. Based on the information gathered under paragraph (a) of this section, and in consultation with the SHPO/THPO and any Indian tribe or Native Hawaiian organization that might attach religious and cultural significance to properties within the area of potential effects, the agency official shall take the steps necessary to identify **historic** properties within the area of potential effects.

(1) Level of effort. The agency official shall make a reasonable and good faith effort to carry out appropriate identification efforts, which may include background research, consultation, oral history interviews, sample field investigation, and field survey. The agency official shall take into account past planning, research and studies, the magnitude and nature of the undertaking and the degree of Federal involvement, the nature and extent of potential effects on **historic** properties, and the likely nature and location of **historic** properties within the area of potential effects. The Secretary's standards and guidelines for identification provide guidance on this subject. The agency official should also consider other applicable professional, State, tribal, and local laws, standards, and guidelines. The agency official shall take into account any confidentiality concerns raised by Indian tribes or Native Hawaiian organizations during the identification process.

(2) Phased identification and evaluation. Where alternatives under consideration consist of corridors or large land areas, or where access to properties is restricted, the agency official may use a phased process to conduct identification and evaluation efforts. The agency official may

also defer final identification and evaluation of **historic** properties if it is specifically provided for in a memorandum of agreement executed pursuant to Sec. 800.6, a programmatic agreement executed pursuant to Sec.

800.14(b), or the documents used by an agency official to comply with the National Environmental Policy Act pursuant to Sec. 800.8. The process should establish the likely presence of **historic** properties within the area of potential effects for each alternative or inaccessible area through background research, consultation and an appropriate level of field investigation, taking into account the number of alternatives under consideration, the magnitude of the undertaking and its likely effects, and the views of the SHPO/THPO and any other consulting parties. As specific aspects or locations of an alternative are refined or access is gained, the agency official shall proceed with the identification and evaluation of **historic** properties in accordance with paragraphs (b)(1) and (c) of this section.

(c) Evaluate **historic** significance.

(1) Apply National Register criteria. In consultation with the SHPO/THPO and any Indian tribe or Native Hawaiian organization that attaches religious and cultural significance to identified properties and guided by the Secretary's standards and guidelines for evaluation, the agency official shall apply the National Register criteria (36 CFR part 63) to properties identified within the area of potential effects that have not been previously evaluated for National Register eligibility. The passage of time, changing perceptions of significance, or incomplete prior evaluations may require the agency official to reevaluate properties previously determined eligible or ineligible. The agency official shall acknowledge that Indian tribes and Native Hawaiian organizations possess special expertise in assessing the eligibility of **historic** properties that may possess religious and cultural significance to them.

(2) Determine whether a property is eligible. If the agency official determines any of the National Register criteria are met and the SHPO/THPO

agrees, the property shall be considered eligible for the National Register for section 106 purposes. If the agency official determines the criteria are not met and the SHPO/THPO agrees, the property shall be considered not eligible. If the agency official and the SHPO/THPO do not agree, or if the Council or the Secretary so request, the agency official shall obtain a determination of eligibility from the Secretary pursuant to 36 CFR part 63. If an Indian tribe or Native Hawaiian organization that attaches religious and cultural significance to a property off tribal lands does not agree, it may ask the Council to request the agency official to obtain a determination of eligibility.

(d) Results of identification and evaluation.

(1) No **historic** properties affected. If the agency official finds that either there are no **historic** properties present or there are **historic** properties present but the undertaking will have no effect upon them as defined in Sec. 800.16(i), the agency official shall provide documentation of this finding, as set forth in Sec. 800.11(d), to the SHPO/THPO. The agency official shall notify all consulting parties, including Indian tribes and Native Hawaiian organizations, and make the documentation available for public inspection prior to approving the undertaking. If the SHPO/THPO, or the Council if it has entered the section 106 process, does not object within 30 days of receipt of an adequately documented finding, the agency official's responsibilities under section 106 are fulfilled.

(2) **Historic** properties affected. If the agency official finds that there are **historic** properties which may be affected by the undertaking or the SHPO/THPO or the Council objects to the agency official's finding under paragraph (d)(1) of this section, the agency official shall notify all consulting parties, including Indian tribes or Native Hawaiian organizations, invite their views on the effects and assess adverse effects, if any, in accordance with Sec. 800.5.

Sec. 800.5 Assessment of adverse effects.

(a) Apply criteria of adverse effect. In consultation with the

SHPO/THPO and any Indian tribe or Native Hawaiian organization that attaches religious and cultural significance to identified **historic** properties, the agency official shall apply the criteria of adverse effect to **historic** properties within the area of potential effects. The agency official shall consider any views concerning such effects which have been provided by consulting parties and the public.

(1) Criteria of adverse effect. An adverse effect is found when an undertaking may alter, directly or indirectly, any of the characteristics of a **historic** property that qualify the property for inclusion in the National Register in a manner that would diminish the integrity of the property's location, design, setting, materials, workmanship, feeling, or association. Consideration shall be given to all qualifying characteristics of a **historic** property, including those that may have been identified subsequent to the original evaluation of the property's eligibility for the National Register. Adverse effects may include reasonably foreseeable effects caused by the undertaking that may occur later in time, be farther removed in distance or be cumulative.

(2) Examples of adverse effects. Adverse effects on **historic** properties include, but are not limited to:

- (i) Physical destruction of or damage to all or part of the property;
- (ii) Alteration of a property, including restoration, rehabilitation, repair, maintenance, stabilization, hazardous material remediation, and provision of handicapped access, that is not consistent with the Secretary's standards for the treatment of **historic** properties (36 CFR part 68) and applicable guidelines;
- (iii) Removal of the property from its **historic** location;
- (iv) Change of the character of the property's use or of physical features within the property's setting that contribute to its **historic** significance;
- (v) Introduction of visual, atmospheric or audible elements that

diminish the integrity of the property's significant **historic** features;

(vi) Neglect of a property which causes its deterioration, except where such neglect and deterioration are recognized qualities of a property of religious and cultural significance to an Indian tribe or Native Hawaiian organization; and

(vii) Transfer, lease, or sale of property out of Federal ownership or control without adequate and legally enforceable restrictions or conditions to ensure long-term preservation of the property's **historic** significance.

(3) Phased application of criteria. Where alternatives under consideration consist of corridors or large land areas, or where access to properties is restricted, the agency official may use a phased process in applying the criteria of adverse effect consistent with phased identification and evaluation efforts conducted pursuant to Sec. 800.4(b)(2).

(b) Finding of no adverse effect. The agency official, in consultation with the SHPO/THPO, may propose a finding of no adverse effect when the undertaking's effects do not meet the criteria of paragraph (a)(1) of this section or the undertaking is modified or conditions are imposed, such as the subsequent review of plans for rehabilitation by the SHPO/THPO to ensure consistency with the Secretary's standards for the treatment of **historic** properties (36 CFR part 68) and applicable guidelines, to avoid adverse effects.

(c) Consulting party review. If the agency official proposes a finding of no adverse effect, the agency official shall notify all consulting parties of the finding and provide them with the documentation specified in Sec. 800.11(e). The SHPO/THPO shall have 30 days from receipt to review the finding.

(1) Agreement with finding. Unless the Council is reviewing the

finding pursuant to Sec. 800.5(c)(3), the agency official may proceed if the SHPO/THPO agrees with the finding. The agency official shall carry out

the undertaking in accordance with Sec. 800.5(d)(1). Failure of the SHPO/THPO to respond within 30 days from receipt of the finding shall be considered agreement of the SHPO/THPO with the finding.

(2) Disagreement with finding.

(i) If the SHPO/THPO or any consulting party disagrees within the 30-day review period, it shall specify the reasons for disagreeing with the finding. The agency official shall either consult with the party to resolve the disagreement, or request the Council to review the finding pursuant to paragraph (c)(3) of this section.

(ii) The agency official should seek the concurrence of any Indian tribe or Native Hawaiian organization that has made known to the agency official that it attaches religious and cultural significance to a **historic** property subject to the finding. If such Indian tribe or Native Hawaiian organization disagrees with the finding, it may within the 30-day review period specify the reasons for disagreeing with the finding and request the Council to review the finding pursuant to paragraph (c)(3) of this section.

(iii) If the Council on its own initiative so requests within the 30-day review period, the agency official shall submit the finding, along with the documentation specified in Sec. 800.11(e), for review pursuant to paragraph (c)(3) of this section. A Council decision to make such a request shall be guided by the criteria in appendix A to this part.

(3) Council review of findings. When a finding is submitted to the Council pursuant to paragraph (c)(2) of this section, the agency official shall include the documentation specified in Sec. 800.11(e). The Council shall review the finding and notify the agency official of its determination as to whether the adverse effect criteria have been correctly applied within 15 days of receiving the documented finding from the agency official. The Council shall specify the basis for its

determination. The agency official shall proceed in accordance with the Council's determination. If the Council does not respond within 15 days of receipt of the finding, the agency official may assume concurrence with the agency official's findings and proceed accordingly.

(d) Results of assessment.

(1) No adverse effect. The agency official shall maintain a record of the finding and provide information on the finding to the public on request, consistent with the confidentiality provisions of Sec. 800.11(c). Implementation of the undertaking in accordance with the finding as documented fulfills the agency official's responsibilities under section 106 and this part. If the agency official will not conduct the undertaking as proposed in the finding, the agency official shall reopen consultation under paragraph (a) of this section.

(2) Adverse effect. If an adverse effect is found, the agency official shall consult further to resolve the adverse effect pursuant to Sec. 800.6.

Sec. 800.6 Resolution of adverse effects.

(a) Continue consultation. The agency official shall consult with the SHPO/THPO and other consulting parties, including Indian tribes and Native

Hawaiian organizations, to develop and evaluate alternatives or modifications to the undertaking that could avoid, minimize, or mitigate adverse effects on **historic** properties.

(1) Notify the Council and determine Council participation. The agency official shall notify the Council of the adverse effect finding by providing the documentation specified in Sec. 800.11(e).

(i) The notice shall invite the Council to participate in the consultation when:

(A) The agency official wants the Council to participate;

(B) The undertaking has an adverse effect upon a National **Historic** Landmark; or

(C) A programmatic agreement under Sec. 800.14(b) will be prepared;

(ii) The SHPO/THPO, an Indian tribe or Native Hawaiian organization, or any other consulting party may at any time independently request the Council to participate in the consultation.

(iii) The Council shall advise the agency official and all consulting parties whether it will participate within 15 days of receipt of notice or other request. Prior to entering the process, the Council shall provide written notice to the agency official and the consulting parties that its decision to participate meets the criteria set forth in appendix A to this part. The Council shall also advise the head of the agency of its decision to enter the process. Consultation is conducted in accordance with paragraph (b)(2) of this section.

(iv) If the Council does not join the consultation, the agency official shall proceed with consultation in accordance with paragraph (b)(1) of this section.

(2) Involve consulting parties. In addition to the consulting parties identified under Sec. 800.3(f), the agency official, the SHPO/ THPO and the Council, if participating, may agree to invite other individuals or organizations to become consulting parties. The agency official shall invite any individual or organization that will assume a specific role or responsibility in a memorandum of agreement to participate as a consulting party.

(3) Provide documentation. The agency official shall provide to all consulting parties the documentation specified in Sec. 800.11(e), subject to the confidentiality provisions of Sec. 800.11(c), and such other documentation as may be developed during the consultation to resolve adverse effects.

(4) Involve the public. The agency official shall make information

available to the public, including the documentation specified in Sec. 800.11(e), subject to the confidentiality provisions of Sec. 800.11(c). The agency official shall provide an opportunity for members of the public to express their views on resolving adverse effects of the undertaking. The agency official should use appropriate mechanisms, taking into account the magnitude of the undertaking and the nature of its effects upon **historic** properties, the likely effects on **historic** properties, and the relationship of the Federal involvement to the undertaking to ensure that the public's views are considered in the consultation. The agency official should also consider the extent of notice and information concerning **historic** preservation issues afforded the public at earlier steps in the section 106 process to determine the appropriate level of public involvement when resolving adverse effects so that the standards of Sec. 800.2(d) are met.

(5) Restrictions on disclosure of information. Section 304 of the act and other authorities may limit the disclosure of information under paragraphs (a)(3) and (a)(4) of this section. If an Indian tribe or Native Hawaiian organization objects to the disclosure of information or if the agency official believes that there are other reasons to withhold information, the agency official shall comply with Sec. 800.11(c) regarding the disclosure of such information.

(b) Resolve adverse effects.

(1) Resolution without the Council.

(i) The agency official shall consult with the SHPO/THPO and other consulting parties to seek ways to avoid, minimize or mitigate the adverse effects.

(ii) The agency official may use standard treatments established by the Council under Sec. 800.14(d) as a basis for a memorandum of agreement.

(iii) If the Council decides to join the consultation, the agency

official shall follow paragraph (b)(2) of this section.

(iv) If the agency official and the SHPO/THPO agree on how the adverse effects will be resolved, they shall execute a memorandum of agreement. The agency official must submit a copy of the executed memorandum of agreement, along with the documentation specified in Sec. 800.11(f), to the Council prior to approving the undertaking in order to meet the requirements of section 106 and this subpart.

(v) If the agency official, and the SHPO/THPO fail to agree on the terms of a memorandum of agreement, the agency official shall request the

Council to join the consultation and provide the Council with the documentation set forth in Sec. 800.11(g). If the Council decides to join the consultation, the agency official shall proceed in accordance with paragraph (b)(2) of this section. If the Council decides not to join the consultation, the Council will notify the agency and proceed to comment in accordance with Sec. 800.7(c).

(2) Resolution with Council participation. If the Council decides to participate in the consultation, the agency official shall consult with the SHPO/THPO, the Council, and other consulting parties, including Indian tribes and Native Hawaiian organizations under Sec. 800.2(c)(3), to seek ways to avoid, minimize or mitigate the adverse effects. If the agency official, the SHPO/THPO, and the Council agree on how the adverse effects will be resolved, they shall execute a memorandum of agreement.

(c) Memorandum of agreement. A memorandum of agreement executed and implemented pursuant to this section evidences the agency official's compliance with section 106 and this part and shall govern the undertaking and all of its parts. The agency official shall ensure that the undertaking is carried out in accordance with the memorandum of agreement.

(1) Signatories. The signatories have sole authority to execute, amend or terminate the agreement in accordance with this subpart.

(i) The agency official and the SHPO/THPO are the signatories to a memorandum of agreement executed pursuant to paragraph (b)(1) of this section.

(ii) The agency official, the SHPO/THPO, and the Council are the signatories to a memorandum of agreement executed pursuant to paragraph (b)(2) of this section.

(iii) The agency official and the Council are signatories to a memorandum of agreement executed pursuant to Sec. 800.7(a)(2).

(2) Invited signatories.

(i) The agency official may invite additional parties to be signatories to a memorandum of agreement. Any such party that signs the memorandum of agreement shall have the same rights with regard to seeking amendment or termination of the memorandum of agreement as other signatories.

(ii) The agency official may invite an Indian tribe or Native Hawaiian organization that attaches religious and cultural significance to **historic** properties located off tribal lands to be a signatory to a memorandum of agreement concerning such properties.

(iii) The agency official should invite any party that assumes a responsibility under a memorandum of agreement to be a signatory.

(iv) The refusal of any party invited to become a signatory to a memorandum of agreement pursuant to paragraph (c)(2) of this section does not invalidate the memorandum of agreement.

(3) Concurrence by others. The agency official may invite all consulting parties to concur in the memorandum of agreement. The signatories may agree to invite others to concur. The refusal of any party invited to concur in the memorandum of agreement does not invalidate the memorandum of agreement.

(4) Reports on implementation. Where the signatories agree it is appropriate, a memorandum of agreement shall include a provision for monitoring and reporting on its implementation.

(5) Duration. A memorandum of agreement shall include provisions for termination and for reconsideration of terms if the undertaking has not been implemented within a specified time.

(6) Discoveries. Where the signatories agree it is appropriate, a memorandum of agreement shall include provisions to deal with the subsequent discovery or identification of additional **historic** properties affected by the undertaking.

(7) Amendments. The signatories to a memorandum of agreement may amend it. If the Council was not a signatory to the original agreement and the signatories execute an amended agreement, the agency official shall file it with the Council.

(8) Termination. If any signatory determines that the terms of a memorandum of agreement cannot be or are not being carried out, the signatories shall consult to seek amendment of the agreement. If the agreement is not amended, any signatory may terminate it. The agency official shall either execute a memorandum of agreement with signatories under paragraph (c)(1) of this section or request the comments of the Council under Sec. 800.7(a).

(9) Copies. The agency official shall provide each consulting party with a copy of any memorandum of agreement executed pursuant to this subpart.

Sec. 800.7 Failure to resolve adverse effects.

(a) Termination of consultation. After consulting to resolve adverse effects pursuant to Sec. 800.6(b)(2), the agency official, the SHPO/THPO, or the Council may determine that further consultation will not be productive and terminate consultation. Any party that terminates consultation shall notify the other consulting parties and provide them the reasons for terminating in writing.

(1) If the agency official terminates consultation, the head of the agency or an Assistant Secretary or other officer with major department-wide or agency-wide responsibilities shall request that the Council comment pursuant to paragraph (c) of this section and shall notify all consulting parties of the request.

(2) If the SHPO terminates consultation, the agency official and the Council may execute a memorandum of agreement without the SHPO's involvement.

(3) If a THPO terminates consultation regarding an undertaking occurring on or affecting **historic** properties on its tribal lands, the Council shall comment pursuant to paragraph (c) of this section.

(4) If the Council terminates consultation, the Council shall notify the agency official, the agency's Federal preservation officer and all consulting parties of the termination and comment under paragraph (c) of this section. The Council may consult with the agency's Federal preservation officer prior to terminating consultation to seek to resolve issues concerning the undertaking and its effects on **historic** properties.

(b) Comments without termination. The Council may determine that it is appropriate to provide additional advisory comments upon an undertaking for which a memorandum of agreement will be executed. The Council shall provide them to the agency official when it executes the memorandum of agreement.

(c) Comments by the Council.

(1) Preparation. The Council shall provide an opportunity for the agency official, all consulting parties, and the public to provide their views within the time frame for developing its comments. Upon request of the Council, the agency official shall provide additional existing information concerning the undertaking and assist the Council in arranging an onsite inspection and an opportunity for public participation.

(2) Timing. The Council shall transmit its comments within 45 days of receipt of a request under paragraph (a)(1) or (a)(3) of this section or Sec. 800.8(c)(3), or termination by the Council under Sec. 800.6(b)(1)(v) or paragraph (a)(4) of this section, unless otherwise agreed to by the agency official.

(3) Transmittal. The Council shall provide its comments to the head of the agency requesting comment with copies to the agency official, the agency's Federal preservation officer, all consulting parties, and others as appropriate.

(4) Response to Council comment. The head of the agency shall take into account the Council's comments in reaching a final decision on the undertaking. Section 110(l) of the act directs that the head of the agency shall document this decision and may not delegate his or her responsibilities pursuant to section 106. Documenting the agency head's decision shall include:

- (i) Preparing a summary of the decision that contains the rationale for the decision and evidence of consideration of the Council's comments and providing it to the Council prior to approval of the undertaking;
- (ii) Providing a copy of the summary to all consulting parties; and
- (iii) Notifying the public and making the record available for public inspection.

Sec. 800.8 Coordination With the National Environmental Policy Act.

(a) General principles.

(1) Early coordination. Federal agencies are encouraged to coordinate compliance with section 106 and the procedures in this part with any steps taken to meet the requirements of the National Environmental Policy Act (NEPA). Agencies should consider their section 106 responsibilities as early as possible in the NEPA process, and plan their public participation, analysis, and review in such a way that they can meet the purposes and requirements of both statutes in a timely and efficient manner. The determination of whether an undertaking is a "major Federal action significantly affecting the quality of the human environment," and therefore requires preparation of an environmental impact statement (EIS) under NEPA, should include consideration of the undertaking's likely effects on **historic** properties. A finding of adverse effect on a **historic** property does not necessarily require an EIS under NEPA.

(2) Consulting party roles. SHPO/THPOs, Indian tribes, and Native Hawaiian organizations, other consulting parties, and organizations and individuals who may be concerned with the possible effects of an agency action on **historic** properties should be prepared to consult with agencies early in the NEPA process, when the purpose of and need for the proposed action as well as the widest possible range of alternatives are under consideration.

(3) Inclusion of **historic** preservation issues. Agency officials should ensure that preparation of an environmental assessment (EA) and finding of no significant impact (FONSI) or an EIS and record of decision (ROD) includes appropriate scoping, identification of **historic** properties, assessment of effects upon them, and consultation leading to resolution of any adverse effects.

(b) Actions categorically excluded under NEPA. If a project, activity or program is categorically excluded from NEPA review under an agency's NEPA procedures, the agency official shall determine if it still qualifies

as an undertaking requiring review under section 106 pursuant to Sec. 800.3(a). If so, the agency official shall proceed with section 106 review in accordance with the procedures in this subpart.

(c) Use of the NEPA process for section 106 purposes. An agency official may use the process and documentation required for the preparation of an EA/FONSI or an EIS/ROD to comply with section 106 in lieu of the procedures set forth in Secs. 800.3 through 800.6 if the agency official has notified in advance the SHPO/THPO and the Council that it intends to do so and the following standards are met.

(1) Standards for developing environmental documents to comply with Section 106. During preparation of the EA or draft EIS (DEIS) the agency official shall:

(i) Identify consulting parties either pursuant to Sec. 800.3(f) or through the NEPA scoping process with results consistent with Sec. 800.3(f);

(ii) Identify **historic** properties and assess the effects of the undertaking on such properties in a manner consistent with the standards and criteria of Secs. 800.4 through 800.5, provided that the scope and timing of these steps may be phased to reflect the agency official's consideration of project alternatives in the NEPA process and the effort is commensurate with the assessment of other environmental factors;

(iii) Consult regarding the effects of the undertaking on **historic** properties with the SHPO/THPO, Indian tribes, and Native Hawaiian organizations that might attach religious and cultural significance to affected **historic** properties, other consulting parties, and the Council, where appropriate, during NEPA scoping, environmental analysis, and the preparation of NEPA documents;

(iv) Involve the public in accordance with the agency's published NEPA procedures; and

(v) Develop in consultation with identified consulting parties

alternatives and proposed measures that might avoid, minimize or mitigate

any adverse effects of the undertaking on **historic** properties and describe

them in the EA or DEIS.

(2) Review of environmental documents.

(i) The agency official shall submit the EA, DEIS, or EIS to the SHPO/THPO, Indian tribes, and Native Hawaiian organizations that might attach religious and cultural significance to affected **historic** properties, and other consulting parties prior to or when making the document available for public comment. If the document being prepared is a DEIS or EIS, the agency official shall also submit it to the Council.

(ii) Prior to or within the time allowed for public comment on the document, a SHPO/THPO, an Indian tribe or Native Hawaiian organization, another consulting party or the Council may object to the agency official that preparation of the EA, DEIS, or EIS has not met the standards set forth in paragraph (c)(1) of this section or that the substantive resolution of the effects on **historic** properties proposed in an EA, DEIS, or EIS is inadequate. If the agency official receives such an objection, the agency official shall refer the matter to the Council.

(3) Resolution of objections. Within 30 days of the agency official's referral of an objection under paragraph (c)(2)(ii) of this section, the Council shall notify the agency official either that it agrees with the objection, in which case the agency official shall enter into consultation in accordance with Sec. 800.6(b)(2) or seek Council comments in accordance with Sec. 800.7(a), or that it disagrees with the objection, in which case the agency official shall continue its compliance with this section. Failure of the Council to respond within the 30 day period shall be considered disagreement with the objection.

(4) Approval of the undertaking. If the agency official has found, during the preparation of an EA or EIS that the effects of an undertaking on **historic** properties are adverse, the agency official shall develop measures in the EA, DEIS, or EIS to avoid, minimize, or mitigate such effects in accordance with paragraph (c)(1)(v) of this section. The agency official's responsibilities under section 106 and the procedures in this subpart shall then be satisfied when either:

(i) A binding commitment to such proposed measures is incorporated in:

(A) The ROD, if such measures were proposed in a DEIS or EIS; or

(B) An MOA drafted in compliance with Sec. 800.6(c); or

(ii) The Council has commented under Sec. 800.7 and received the agency's response to such comments.

(5) Modification of the undertaking. If the undertaking is modified after approval of the FONSI or the ROD in a manner that changes the undertaking or alters its effects on **historic** properties, or if the agency official fails to ensure that the measures to avoid, minimize or mitigate adverse effects (as specified in either the FONSI or the ROD, or in the binding commitment adopted pursuant to paragraph (c)(4) of this section) are carried out, the agency official shall notify the Council and all consulting parties that supplemental environmental documents will be prepared in compliance with NEPA or that the procedures in Secs. 800.3 through 800.6 will be followed as necessary.

Sec. 800.9 Council review of section 106 compliance.

(a) Assessment of agency official compliance for individual undertakings. The Council may provide to the agency official its advisory opinion regarding the substance of any finding, determination or decision or regarding the adequacy of the agency official's compliance with the procedures under this part. The Council may provide such advice at any time at the request of any individual, agency or organization or on its own initiative. The agency official shall consider the views of the Council in reaching a decision on the matter in question.

(b) Agency foreclosure of the Council's opportunity to comment. Where an agency official has failed to complete the requirements of section 106 in accordance with the procedures in this part prior to the approval of an undertaking, the Council's opportunity to comment may be foreclosed.

The Council may review a case to determine whether a foreclosure has occurred.

The Council shall notify the agency official and the agency's Federal preservation officer and allow 30 days for the agency official to provide information as to whether foreclosure has occurred. If the Council determines foreclosure has occurred, the Council shall transmit the determination to the agency official and the head of the agency. The Council shall also make the determination available to the public and any parties known to be interested in the undertaking and its effects upon **historic** properties.

(c) Intentional adverse effects by applicants.

(1) Agency responsibility. Section 110(k) of the act prohibits a Federal agency from granting 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, has 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. Guidance issued by the Secretary pursuant to section 110 of the act governs its implementation.

(2) Consultation with the Council. When an agency official determines, based on the actions of an applicant, that section 110(k) is applicable and that circumstances may justify granting the assistance, the agency official shall notify the Council and provide documentation specifying the circumstances under which the adverse effects to the **historic** property occurred and the degree of damage to the integrity of the property. This documentation shall include any views obtained from the applicant,

SHPO/THPO, an Indian tribe if the undertaking occurs on or affects **historic** properties on tribal lands, and other parties known to be interested in the undertaking.

(i) Within thirty days of receiving the agency official's notification, unless otherwise agreed to by the agency official, the Council shall provide the agency official with its opinion as to whether circumstances justify granting assistance to the applicant and any possible mitigation of the adverse effects.

(ii) The agency official shall consider the Council's opinion in making a decision on whether to grant assistance to the applicant, and shall notify the Council, the SHPO/THPO, and other parties known to be interested in the undertaking prior to granting the assistance.

(3) Compliance with Section 106. If an agency official, after consulting with the Council, determines to grant the assistance, the agency official shall comply with Secs. 800.3 through 800.6 to take into account the effects of the undertaking on any **historic** properties.

(d) Evaluation of Section 106 operations. The Council may evaluate the operation of the section 106 process by periodic reviews of how participants have fulfilled their legal responsibilities and how effectively the outcomes reached advance the purposes of the act.

(1) Information from participants. Section 203 of the act authorizes the Council to obtain information from Federal agencies necessary to conduct evaluation of the section 106 process. The agency official shall make documentation of agency policies, operating procedures and actions taken to comply with section 106 available to the Council upon request. The Council may request available information and documentation from other participants in the section 106 process.

(2) Improving the operation of section 106. Based upon any evaluation of the section 106 process, the Council may make recommendations to

participants, the heads of Federal agencies, and the Secretary of actions to improve the efficiency and effectiveness of the process. Where the Council determines that an agency official or a SHPO/THPO has failed to properly carry out the responsibilities assigned under the process in this part, the Council may participate in individual case reviews conducted under such process in addition to the SHPO/THPO for such period that it determines is necessary to improve performance or correct deficiencies. If the Council finds a pattern of failure by a Federal agency in carrying out its responsibilities under section 106, the Council may review the policies and programs of the agency related to **historic** preservation pursuant to section 202(a)(6) of the act and recommend methods to improve the effectiveness, coordination, and consistency of those policies and programs with section 106.

Sec. 800.10 Special requirements for protecting National **Historic** Landmarks.

(a) Statutory requirement. Section 110(f) of the act requires that the agency official, to the maximum extent possible, undertake such planning and actions as may be necessary to minimize harm to any National **Historic** Landmark that may be directly and adversely affected by an undertaking. When commenting on such undertakings, the Council shall use the process set forth in Secs. 800.6 through 800.7 and give special consideration to protecting National **Historic** Landmarks as specified in this section.

(b) Resolution of adverse effects. The agency official shall request the Council to participate in any consultation to resolve adverse effects on National **Historic** Landmarks conducted under Sec. 800.6.

(c) Involvement of the Secretary. The agency official shall notify the Secretary of any consultation involving a National **Historic** Landmark and invite the Secretary to participate in the consultation where there may be an adverse effect. The Council may request a report from the Secretary under section 213 of the act to assist in the consultation.

(d) Report of outcome. When the Council participates in consultation under this section, it shall report the outcome of the section 106 process, providing its written comments or any memoranda of agreement to which it is a signatory, to the Secretary and the head of the agency responsible for the undertaking.

Sec. 800.11 Documentation standards.

(a) Adequacy of documentation. The agency official shall ensure that a determination, finding, or agreement under the procedures in this subpart is supported by sufficient documentation to enable any reviewing parties to understand its basis. The agency official shall provide such documentation to the extent permitted by law and within available funds. When an agency official is conducting phased identification or evaluation under this subpart, the documentation standards regarding description of **historic** properties may be applied flexibly. If the Council, or the SHPO/THPO when the Council is not involved, determines the applicable documentation standards are not met, the Council or the SHPO/THPO, as appropriate, shall notify the agency official and specify the information needed to meet the standard. At the request of the agency official or any of the consulting parties, the Council shall review any disputes over whether documentation standards are met and provide its views to the agency official and the consulting parties.

(b) Format. The agency official may use documentation prepared to comply with other laws to fulfill the requirements of the procedures in this subpart, if that documentation meets the standards of this section.

(c) Confidentiality.

(1) Authority to withhold information. Section 304 of the act provides that the head of a Federal agency or other public official receiving grant assistance pursuant to the act, after consultation with the Secretary, shall withhold from public disclosure information about the location, character, or ownership of a **historic** property when disclosure may cause

a significant invasion of privacy; risk harm to the **historic** property; or impede the use of a traditional religious site by practitioners. When the head of a Federal agency or other public official has determined that information should be withheld from the public pursuant to these criteria, the Secretary, in consultation with such Federal agency head or official, shall determine who may have access to the information for the purposes of carrying out the act.

(2) Consultation with the Council. When the information in question has been developed in the course of an agency's compliance with this part, the Secretary shall consult with the Council in reaching determinations on the withholding and release of information. The Federal agency shall provide the Council with available information, including views of the SHPO/THPO, Indian tribes and Native Hawaiian organizations, related to the confidentiality concern. The Council shall advise the Secretary and the Federal agency within 30 days of receipt of adequate documentation.

(3) Other authorities affecting confidentiality. Other Federal laws and program requirements may limit public access to information concerning an undertaking and its effects on **historic** properties. Where applicable, those authorities shall govern public access to information developed in the section 106 process and may authorize the agency official to protect the privacy of non-governmental applicants.

(d) Finding of no **historic** properties affected. Documentation shall include:

(1) A description of the undertaking, specifying the Federal involvement, and its area of potential effects, including photographs, maps, drawings, as necessary;

(2) A description of the steps taken to identify **historic** properties,

including, as appropriate, efforts to seek information pursuant to Sec. 800.4(b); and

(3) The basis for determining that no **historic** properties are present or affected.

(e) Finding of no adverse effect or adverse effect. Documentation shall include:

(1) A description of the undertaking, specifying the Federal involvement, and its area of potential effects, including photographs, maps, and drawings, as necessary;

(2) A description of the steps taken to identify **historic** properties;

(3) A description of the affected **historic** properties, including information on the characteristics that qualify them for the National Register;

(4) A description of the undertaking's effects on **historic** properties;

(5) An explanation of why the criteria of adverse effect were found applicable or inapplicable, including any conditions or future actions to avoid, minimize or mitigate adverse effects; and

(6) Copies or summaries of any views provided by consulting parties and the public.

(f) Memorandum of agreement. When a memorandum of agreement is filed

with the Council, the documentation shall include, any substantive revisions or additions to the documentation provided the Council pursuant to Sec. 800.6(a)(1), an evaluation of any measures considered to avoid or minimize the undertaking's adverse effects and a summary of the views of consulting parties and the public.

(g) Requests for comment without a memorandum of agreement. Documentation shall include:

- (1) A description and evaluation of any alternatives or mitigation measures that the agency official proposes to resolve the undertaking's adverse effects;
- (2) A description of any reasonable alternatives or mitigation measures that were considered but not chosen, and the reasons for their rejection;
- (3) Copies or summaries of any views submitted to the agency official concerning the adverse effects of the undertaking on **historic** properties and alternatives to reduce or avoid those effects; and
- (4) Any substantive revisions or additions to the documentation provided the Council pursuant to Sec. 800.6(a)(1).

Sec. 800.12 Emergency situations.

(a) Agency procedures. The agency official, in consultation with the appropriate SHPOs/THPOs, affected Indian tribes and Native Hawaiian organizations, and the Council, is encouraged to develop procedures for taking **historic** properties into account during operations which respond to a disaster or emergency declared by the President, a tribal government, or the Governor of a State or which respond to other immediate threats to life or property. If approved by the Council, the procedures shall govern the agency's **historic** preservation responsibilities during any disaster or emergency in lieu of Secs. 800.3 through 800.6.

(b) Alternatives to agency procedures. In the event an agency official proposes an emergency undertaking as an essential and immediate response to a disaster or emergency declared by the President, a tribal government, or the Governor of a State or another immediate threat to life or property, and the agency has not developed procedures pursuant to paragraph (a) of this section, the agency official may comply with section 106 by:

(1) Following a programmatic agreement developed pursuant to Sec. 800.14(b) that contains specific provisions for dealing with **historic** properties in emergency situations; or

(2) Notifying the Council, the appropriate SHPO/THPO and any Indian tribe or Native Hawaiian organization that may attach religious and cultural significance to **historic** properties likely to be affected prior to the undertaking and affording them an opportunity to comment within seven days of notification. If the agency official determines that circumstances do not permit seven days for comment, the agency official shall notify the Council, the SHPO/THPO and the Indian tribe or Native Hawaiian organization and invite any comments within the time available.

(c) Local governments responsible for section 106 compliance. When a local government official serves as the agency official for section 106 compliance, paragraphs (a) and (b) of this section also apply to an imminent threat to public health or safety as a result of a natural disaster or emergency declared by a local government's chief executive officer or legislative body, provided that if the Council or SHPO/THPO objects to the proposed action within seven days, the agency official shall comply with Secs. 800.3 through 800.6.

(d) Applicability. This section applies only to undertakings that will be implemented within 30 days after the disaster or emergency has been formally declared by the appropriate authority. An agency may request an extension of the period of applicability from the Council prior to the expiration of the 30 days. Immediate rescue and salvage operations conducted to preserve life or property are exempt from the provisions of section 106 and this part.

Sec. 800.13 Post-review discoveries.

(a) Planning for subsequent discoveries.

(1) Using a programmatic agreement. An agency official may develop a programmatic agreement pursuant to Sec. 800.14(b) to govern the actions to

be taken when **historic** properties are discovered during the implementation of an undertaking.

(2) Using agreement documents. When the agency official's identification efforts in accordance with Sec. 800.4 indicate that **historic** properties are likely to be discovered during implementation of an undertaking and no programmatic agreement has been developed pursuant to paragraph (a)(1) of this section, the agency official shall include in any finding of no adverse effect or memorandum of agreement a process to resolve any adverse effects upon such properties. Actions in conformance with the process satisfy the agency official's responsibilities under section 106 and this part.

(b) Discoveries without prior planning. If **historic** properties are discovered or unanticipated effects on **historic** properties found after the agency official has completed the section 106 process without establishing a process under paragraph (a) of this section, the agency official shall make reasonable efforts to avoid, minimize or mitigate adverse effects to such properties and:

(1) If the agency official has not approved the undertaking or if construction on an approved undertaking has not commenced, consult to resolve adverse effects pursuant to Sec. 800.6; or

(2) If the agency official, the SHPO/THPO and any Indian tribe or Native Hawaiian organization that might attach religious and cultural significance to the affected property agree that such property is of value solely for its scientific, prehistoric, **historic** or archeological data, the agency official may comply with the Archeological and **Historic** Preservation Act instead of the procedures in this part and provide the Council, the SHPO/THPO, and the Indian tribe or Native Hawaiian organization with a report on the actions within a reasonable time after they are completed; or

(3) If the agency official has approved the undertaking and construction has commenced, determine actions that the agency official can take to resolve adverse effects, and notify the SHPO/THPO, any Indian tribe or Native Hawaiian organization that might attach religious and cultural significance to the affected property, and the Council within 48 hours of the discovery. The notification shall describe the agency official's assessment of National Register eligibility of the property and proposed actions to resolve the adverse effects. The SHPO/THPO, the Indian tribe or Native Hawaiian organization and the Council shall respond within 48 hours of the notification. The agency official shall take into account their recommendations regarding National Register eligibility and proposed actions, and then carry out appropriate actions. The agency official shall provide the SHPO/THPO, the Indian tribe or Native Hawaiian organization and the Council a report of the actions when they are completed.

(c) Eligibility of properties. The agency official, in consultation with the SHPO/THPO, may assume a newly-discovered property to be eligible for the National Register for purposes of section 106. The agency official shall specify the National Register criteria used to assume the property's eligibility so that information can be used in the resolution of adverse effects.

(d) Discoveries on tribal lands. If **historic** properties are discovered on tribal lands, or there are unanticipated effects on **historic** properties found on tribal lands, after the agency official has completed the section 106 process without establishing a process under paragraph (a) of this section and construction has commenced, the agency official shall comply with applicable tribal regulations and procedures and obtain the concurrence of the Indian tribe on the proposed action.

Subpart C Program Alternatives

Sec. 800.14 Federal agency program alternatives.

(a) Alternate procedures. An agency official may develop procedures to implement section 106 and substitute them for all or part of subpart B of this part if they are consistent with the Council's regulations pursuant to section 110(a)(2)(E) of the act.

(1) Development of procedures. The agency official shall consult with the Council, the National Conference of State **Historic** Preservation Officers, or individual SHPO/THPOs, as appropriate, and Indian tribes and Native Hawaiian organizations, as specified in paragraph (f) of this section, in the development of alternate procedures, publish notice of the availability of proposed alternate procedures in the Federal Register and take other appropriate steps to seek public input during the development of alternate procedures.

(2) Council review. The agency official shall submit the proposed alternate procedures to the Council for a 60-day review period. If the Council finds the procedures to be consistent with this part, it shall notify the agency official and the agency official may adopt them as final alternate procedures.

(3) Notice. The agency official shall notify the parties with which it has consulted and publish notice of final alternate procedures in the Federal Register.

(4) Legal effect. Alternate procedures adopted pursuant to this subpart substitute for the Council's regulations for the purposes of the agency's compliance with section 106, except that where an Indian tribe has entered into an agreement with the Council to substitute tribal **historic** preservation regulations for the Council's regulations under section 101(d)(5) of the act, the agency shall follow those regulations in lieu of the agency's procedures regarding undertakings on tribal lands. Prior to the Council entering into such agreements, the Council will provide Federal agencies notice and opportunity to comment on the proposed

substitute tribal regulations.

(b) Programmatic agreements. The Council and the agency official may negotiate a programmatic agreement to govern the implementation of a particular program or the resolution of adverse effects from certain complex project situations or multiple undertakings.

(1) Use of programmatic agreements. A programmatic agreement may be used:

(i) When effects on **historic** properties are similar and repetitive or are multi-State or regional in scope;

(ii) When effects on **historic** properties cannot be fully determined prior to approval of an undertaking;

(iii) When nonfederal parties are delegated major decisionmaking responsibilities;

(iv) Where routine management activities are undertaken at Federal installations, facilities, or other land-management units; or

(v) Where other circumstances warrant a departure from the normal section 106 process.

(2) Developing programmatic agreements for agency programs.

(i) The consultation shall involve, as appropriate, SHPO/THPOs, the National Conference of State **Historic** Preservation Officers (NCSHPO), Indian tribes and Native Hawaiian organizations, other Federal agencies, and members of the public. If the programmatic agreement has the potential to affect **historic** properties on tribal lands or **historic** properties of religious and cultural significance to an Indian tribe or Native Hawaiian organization, the agency official shall also follow paragraph (f) of this section.

(ii) Public participation. The agency official shall arrange for

public participation appropriate to the subject matter and the scope of the program and in accordance with subpart A of this part. The agency official shall consider the nature of the program and its likely effects on **historic** properties and take steps to involve the individuals, organizations and entities likely to be interested.

(iii) Effect. The programmatic agreement shall take effect when executed by the Council, the agency official and the appropriate SHPOs/THPOs when the programmatic agreement concerns a specific region or the president of NCSHPO when NCSHPO has participated in the consultation. A programmatic agreement shall take effect on tribal lands only when the THPO, Indian tribe, or a designated representative of the tribe is a signatory to the agreement. Compliance with the procedures established by an approved programmatic agreement satisfies the agency's section 106 responsibilities for all individual undertakings of the program covered by the agreement until it expires or is terminated by the agency, the president of NCSHPO when a signatory, or the Council. Termination by an individual SHPO/THPO shall only terminate the application of a regional programmatic agreement within the jurisdiction of the SHPO/THPO. If a THPO assumes the responsibilities of a SHPO pursuant to section 101(d)(2) of the act and the SHPO is signatory to programmatic agreement, the THPO assumes the role of a signatory, including the right to terminate a regional programmatic agreement on lands under the jurisdiction of the tribe.

(iv) Notice. The agency official shall notify the parties with which it has consulted that a programmatic agreement has been executed under paragraph (b) of this section, provide appropriate public notice before it takes effect, and make any internal agency procedures implementing the agreement readily available to the Council, SHPO/ THPOs, and the public.

(v) If the Council determines that the terms of a programmatic agreement are not being carried out, or if such an agreement is terminated, the agency official shall comply with subpart B of this part with regard to individual undertakings of the program covered by the agreement.

(3) Developing programmatic agreements for complex or multiple undertakings. Consultation to develop a programmatic agreement for dealing with the potential adverse effects of complex projects or multiple undertakings shall follow Sec. 800.6. If consultation pertains to an activity involving multiple undertakings and the parties fail to reach agreement, then the agency official shall comply with the provisions of subpart B of this part for each individual undertaking.

(4) Prototype programmatic agreements. The Council may designate an agreement document as a prototype programmatic agreement that may be used for the same type of program or undertaking in more than one case or area.

When an agency official uses such a prototype programmatic agreement, the agency official may develop and execute the agreement with the appropriate SHPO/THPO and the agreement shall become final without need for Council participation in consultation or Council signature.

(c) Exempted categories.

(1) Criteria for establishing. An agency official may propose a program or category of agency undertakings that may be exempted from review under the provisions of subpart B of this part, if the program or category meets the following criteria:

(i) The actions within the program or category would otherwise qualify as "undertakings" as defined in Sec. 800.16;

(ii) The potential effects of the undertakings within the program or category upon **historic** properties are foreseeable and likely to be minimal or not adverse; and

(iii) Exemption of the program or category is consistent with the purposes of the act.

(2) Public participation. The agency official shall arrange for public participation appropriate to the subject matter and the scope of the exemption and in accordance with the standards in subpart A of this part. The agency official shall consider the nature of the exemption and its likely effects on **historic** properties and take steps to involve individuals, organizations and entities likely to be interested.

(3) Consultation with SHPOs/THPOs. The agency official shall notify and consider the views of the SHPOs/THPOs on the exemption.

(4) Consultation with Indian tribes and Native Hawaiian organizations. If the exempted program or category of undertakings has the potential to affect **historic** properties on tribal lands or **historic** properties of religious and cultural significance to an Indian tribe or Native Hawaiian organization, the Council shall follow the requirements for the agency official set forth in paragraph (f) of this section.

(5) Council review of proposed exemptions. The Council shall review a request for an exemption that is supported by documentation describing the program or category for which the exemption is sought, demonstrating that the criteria of paragraph (c)(1) of this section have been met, describing the methods used to seek the views of the public, and summarizing any views submitted by the SHPO/THPOs, the public, and any others consulted.

Unless it requests further information, the Council shall approve or reject the proposed exemption within 30 days of receipt, and thereafter notify the agency official and SHPO/THPOs of the decision. The decision shall be based on the consistency of the exemption with the purposes of

the act, taking into consideration the magnitude of the exempted undertaking or program and the likelihood of impairment of **historic** properties in accordance with section 214 of the act.

(6) Legal consequences. Any undertaking that falls within an approved exempted program or category shall require no further review pursuant to subpart B of this part, unless the agency official or the Council determines that there are circumstances under which the normally excluded undertaking should be reviewed under subpart B of this part.

(7) Termination. The Council may terminate an exemption at the request of the agency official or when the Council determines that the exemption no longer meets the criteria of paragraph (c)(1) of this section. The Council shall notify the agency official 30 days before termination becomes effective.

(8) Notice. The agency official shall publish notice of any approved exemption in the Federal Register.

(d) Standard treatments.

(1) Establishment. The Council, on its own initiative or at the request of another party, may establish standard methods for the treatment of a category of **historic** properties, a category of undertakings, or a category of effects on **historic** properties to assist Federal agencies in satisfying the requirements of subpart B of this part. The Council shall publish notice of standard treatments in the Federal Register.

(2) Public participation. The Council shall arrange for public participation appropriate to the subject matter and the scope of the standard treatment and consistent with subpart A of this part. The Council shall consider the nature of the standard treatment and its likely effects on **historic** properties and the individuals, organizations and entities likely to be interested. Where an agency official has proposed a standard treatment, the Council may request the agency official to arrange for

public involvement.

(3) Consultation with SHPOs/THPOs. The Council shall notify and consider the views of SHPOs/THPOs on the proposed standard treatment.

(4) Consultation with Indian tribes and Native Hawaiian organizations. If the proposed standard treatment has the potential to affect **historic** properties on tribal lands or **historic** properties of religious and cultural significance to an Indian tribe or Native Hawaiian organization, the Council shall follow the requirements for the agency official set forth in paragraph (f) of this section.

(5) Termination. The Council may terminate a standard treatment by publication of a notice in the Federal Register 30 days before the termination takes effect.

(e) Program comments. An agency official may request the Council to comment on a category of undertakings in lieu of conducting individual reviews under Secs. 800.4 through 800.6. The Council may provide program comments at its own initiative.

(1) Agency request. The agency official shall identify the category of undertakings, specify the likely effects on **historic** properties, specify the steps the agency official will take to ensure that the effects are taken into account, identify the time period for which the comment is requested and summarize any views submitted by the public.

(2) Public participation. The agency official shall arrange for public participation appropriate to the subject matter and the scope of the category and in accordance with the standards in subpart A of this part. The agency official shall consider the nature of the undertakings and their likely effects on **historic** properties and the individuals, organizations and entities likely to be interested.

(3) Consultation with SHPOs/THPOs. The Council shall notify and consider the views of SHPOs/THPOs on the proposed program comment.

(4) Consultation with Indian tribes and Native Hawaiian organizations. If the program comment has the potential to affect **historic** properties on tribal lands or **historic** properties of religious and cultural significance to an Indian tribe or Native Hawaiian organization, the Council shall follow the requirements for the agency official set forth in paragraph (f) of this section.

(5) Council action. Unless the Council requests additional documentation, notifies the agency official that it will decline to comment, or obtains the consent of the agency official to extend the period for providing comment, the Council shall comment to the agency official within 45 days of the request.

(i) If the Council comments, the agency official shall take into account the comments of the Council in carrying out the undertakings within the category and publish notice in the Federal Register of the Council's comments and steps the agency will take to ensure that effects to **historic** properties are taken into account.

(ii) If the Council declines to comment, the agency official shall continue to comply with the requirements of Secs. 800.3 through 800.6 for the individual undertakings.

(6) Withdrawal of comment. If the Council determines that the consideration of **historic** properties is not being carried out in a manner consistent with the program comment, the Council may withdraw the comment and the agency official shall comply with the requirements of Secs. 800.3 through 800.6 for the individual undertakings.

(f) Consultation with Indian tribes and Native Hawaiian organizations when developing program alternatives. Whenever an agency official proposes a program alternative pursuant to paragraphs (a) through (e) of this section, the agency official shall ensure that development of the program alternative includes appropriate government- to-government consultation

with affected Indian tribes and consultation with affected Native Hawaiian organizations.

(1) Identifying affected Indian tribes and Native Hawaiian organizations. If any undertaking covered by a proposed program alternative has the potential to affect **historic** properties on tribal lands, the agency official shall identify and consult with the Indian tribes having jurisdiction over such lands. If a proposed program alternative has the potential to affect **historic** properties of religious and cultural significance to an Indian tribe or a Native Hawaiian organization which are located off tribal lands, the agency official shall identify those Indian tribes and Native Hawaiian organizations that might attach religious and cultural significance to such properties and consult with them. When a proposed program alternative has nationwide applicability, the agency official shall identify an appropriate government to government consultation with Indian tribes and consult with Native Hawaiian organizations in accordance with existing Executive orders, Presidential memoranda, and applicable provisions of law.

(2) Results of consultation. The agency official shall provide summaries of the views, along with copies of any written comments, provided by affected Indian tribes and Native Hawaiian organizations to the Council as part of the documentation for the proposed program alternative. The agency official and the Council shall take those views into account in reaching a final decision on the proposed program alternative.

Sec. 800.15 Tribal, State, and local program alternatives. [Reserved]

Sec. 800.16 Definitions.

(a) Act means the National **Historic** Preservation Act of 1966, as amended, 16 U.S.C. 470-470w-6.

(b) Agency means agency as defined in 5 U.S.C. 551.

(c) Approval of the expenditure of funds means any final agency decision authorizing or permitting the expenditure of Federal funds or

financial assistance on an undertaking, including any agency decision that may be subject to an administrative appeal.

(d) Area of potential effects means the geographic area or areas within which an undertaking may directly or indirectly cause alterations in the character or use of **historic** properties, if any such properties exist. The area of potential effects is influenced by the scale and nature of an undertaking and may be different for different kinds of effects caused by the undertaking.

(e) Comment means the findings and recommendations of the Council formally provided in writing to the head of a Federal agency under section 106.

(f) Consultation means the process of seeking, discussing, and considering the views of other participants, and, where feasible, seeking agreement with them regarding matters arising in the section 106 process. The Secretary's "Standards and Guidelines for Federal Agency Preservation Programs pursuant to the National **Historic** Preservation Act" provide further guidance on consultation.

(g) Council means the Advisory Council on **Historic** Preservation or a Council member or employee designated to act for the Council.

(h) Day or days means calendar days.

(i) Effect means alteration to the characteristics of a **historic** property qualifying it for inclusion in or eligibility for the National Register.

(j) Foreclosure means an action taken by an agency official that effectively precludes the Council from providing comments which the agency official can meaningfully consider prior to the approval of the undertaking.

(k) Head of the agency means the chief official of the Federal agency

responsible for all aspects of the agency's actions. If a State, local, or tribal government has assumed or has been delegated responsibility for section 106 compliance, the head of that unit of government shall be considered the head of the agency.

(l)(1) **Historic** property means any prehistoric or **historic** district, site, building, structure, or object included in, or eligible for inclusion in, the National Register of **Historic** Places maintained by the Secretary of the Interior. This term includes artifacts, records, and remains that are related to and located within such properties. The term includes properties of traditional religious and cultural importance to an Indian tribe or Native Hawaiian organization and that meet the National Register criteria.

(2) The term eligible for inclusion in the National Register includes both properties formally determined as such in accordance with regulations of the Secretary of the Interior and all other properties that meet the National Register criteria.

(m) Indian 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.

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

(o) Memorandum of agreement means the document that records the terms and conditions agreed upon to resolve the adverse effects of an undertaking upon **historic** properties.

(p) National **Historic** Landmark means a **historic** property that the

Secretary of the Interior has designated a National **Historic** Landmark.

(q) National Register means the National Register of **Historic** Places maintained by the Secretary of the Interior.

(r) National Register criteria means the criteria established by the Secretary of the Interior for use in evaluating the eligibility of properties for the National Register (36 CFR part 60).

(s)(1) Native Hawaiian organization means any organization which serves and represents the interests of Native Hawaiians; has as a primary and stated purpose the provision of services to Native Hawaiians; and has demonstrated expertise in aspects of **historic** preservation that are significant to Native Hawaiians.

(2) 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.

(t) Programmatic agreement means a document that records the terms and conditions agreed upon to resolve the potential adverse effects of a Federal agency program, complex undertaking or other situations in accordance with Sec. 800.14(b).

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

(v) State **Historic** Preservation Officer (SHPO) means the official appointed or designated pursuant to section 101(b)(1) of the act to administer the State **historic** preservation program or a representative designated to act for the State **historic** preservation officer.

(w) Tribal **Historic** Preservation Officer (THPO) means the tribal official appointed by the tribe's chief governing authority or designated by a tribal ordinance or preservation program who has assumed the responsibilities of the SHPO for purposes of section 106 compliance on tribal lands in accordance with section 101(d)(2) of the act.

(x) Tribal lands means all lands within the exterior boundaries of any Indian reservation and all dependent Indian communities.

(y) Undertaking means a project, activity, or program funded in whole or in part under the direct or indirect jurisdiction of a Federal agency, including those carried out by or on behalf of a Federal 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.

Appendix A to Part 800 Criteria for Council Involvement in Reviewing Individual Section 106 Cases

(a) Introduction. This appendix sets forth the criteria that will be used by the Council to determine whether to enter an individual section 106 review that it normally would not be involved in.

(b) General policy. The Council may choose to exercise its authorities under the section 106 regulations to participate in an individual project pursuant to the following criteria. However, the Council will not always elect to participate even though one or more of the criteria may be met.

(c) Specific criteria. The Council is likely to enter the section 106 process at the steps specified in the regulations in this part when an undertaking:

(1) Has substantial impacts on important **historic** properties. This may include adverse effects on properties that possess a national level of significance or on properties that are of unusual or noteworthy importance or are a rare property type; or adverse effects to large numbers of **historic** properties, such as impacts to multiple properties within a **historic** district.

(2) Presents important questions of policy or interpretation. This may include questions about how the Council's regulations are being applied or

interpreted, including possible foreclosure or anticipatory demolition situations; situations where the outcome will set a precedent affecting Council policies or program goals; or the development of programmatic agreements that alter the way the section 106 process is applied to a group or type of undertakings.

(3) Has the potential for presenting procedural problems. This may include cases with substantial public controversy that is related to **historic** preservation issues; with disputes among or about consulting parties which the Council's involvement could help resolve; that are involved or likely to be involved in litigation on the basis of section 106; or carried out by a Federal agency, in a State or locality, or on tribal lands where the Council has previously identified problems with section 106 compliance pursuant to Sec. 800.9(d)(2).

(4) Presents issues of concern to Indian tribes or Native Hawaiian organizations. This may include cases where there have been concerns raised about the identification of, evaluation of or assessment of effects on **historic** properties to which an Indian tribe or Native Hawaiian organization attaches religious and cultural significance; where an Indian tribe or Native Hawaiian organization has requested Council involvement to assist in the resolution of adverse effects; or where there are questions relating to policy, interpretation or precedent under section 106 or its relation to other authorities, such as the Native American Graves Protection and Repatriation Act.

Dated: December 4th, 2000.

John M. Fowler,
Executive Director.

[FR Doc. 00-31253 Filed 12-11-00; 8:45 am]

Posted January 2001

[Return to Top](#)

APPENDIX C 41 CFR PART 102 FEDERAL MANAGEMENT REGULATIONS (FMR)

PART 102-78--**HISTORIC** PRESERVATION

Sec.

102-78.5 What is the scope of this part?

102-78.10 What basic **historic** preservation policy governs Federal agencies?

102-78.15 What are **historic** properties?

102-78.20 Are Federal agencies required to identify **historic** properties?

102-78.25 What is an undertaking?

102-78.30 What are consulting parties?

102-78.35 Are Federal agencies required to involve consulting parties in their **historic** preservation activities?

102-78.40 What responsibilities do Federal agencies have when an undertaking adversely affects a **historic** or cultural property?

102-78.45 What are Federal agencies' responsibilities concerning nomination of properties to the National Register?

102-78.50 What **historic** preservation services must Federal agencies provide?

102-78.55 For which properties must Federal agencies provide **historic** preservation services?

102-78.60 What are Federal agencies' **historic** preservation responsibilities when acquiring leased space?

102-78.65 What are Federal agencies' **historic** preservation responsibilities when disposing of real property under their control?

102-78.70 What are an agency's **historic** preservation responsibilities when disposing of another Federal agency's real property?

Authority: 16 U.S.C. 470 h-2; 40 U.S.C. 486(c) and 490(a).

Sec. 102-78.5 What is the scope of this part?

The real property policies contained in this part apply to Federal agencies, including the GSA/Public Buildings Service (PBS),

operating under, or subject to, the authorities of the Administrator of General Services. The policies in this part are in furtherance of GSA's preservation program under section 110 of the National **Historic** Preservation Act (16 U.S.C. 470) and apply to properties under the jurisdiction or control of the Administrator and to any Federal agencies operating, maintaining or protecting such properties under a delegation of authority from the Administrator.

Sec. 102-78.10 What basic **historic** preservation policy governs Federal agencies?

To protect, enhance and preserve **historic** and cultural property under their control, Federal agencies must consider the effects of their undertakings on **historic** and cultural properties and give the Advisory Council on **Historic** Preservation (Advisory Council), the State **Historic** Preservation Officer (SHPO), and other consulting parties a reasonable opportunity to comment regarding the proposed undertakings.

Sec. 102-78.15 What are **historic** properties?

Historic properties are those that are included in, or eligible for inclusion in, the National Register of **Historic** Places (National Register) as more specifically defined at 36 CFR 800.16.

Sec. 102-78.20 Are Federal agencies required to identify **historic** properties?

Yes, Federal agencies must identify all National Register or National Register-eligible **historic** properties under their control. In addition, Federal agencies must apply National Register Criteria (36 CFR part 63) to properties that have not been previously evaluated for National Register eligibility and that may be affected by the undertakings of Federally sponsored activities.

Sec. 102-78.25 What is an undertaking?

The term undertaking means a project, activity, or program under the direct or indirect jurisdiction of a Federal agency, including those:

- (a) Carried out by or on behalf of the agency;
- (b) Carried out with Federal financial assistance;
- (c) Requiring a Federal permit, license, or approval; and
- (d) Subject to State or local regulation administered pursuant to a delegation or approval by a Federal agency.

Sec. 102-78.30 What are consulting parties?

As more particularly described in 36 CFR 800.2(c), consulting parties are those parties having consultative roles in the Section 106 process (i.e., Section 106 of the National **Historic** Preservation Act) that requires Federal agencies to take into account the effects of their undertakings on **historic** properties and afford the Council a reasonable opportunity to comment on such undertakings. Specifically, consulting parties include the State **Historic** Preservation Officer; Tribal **Historic** Preservation Officer; Indian tribes and Native Hawaiian organizations; Representatives of local governments; Applicants for Federal assistance, permits, licenses and other approvals; and other individuals and organizations with a demonstrated interest in the undertaking.

Sec. 102-78.35 Are Federal agencies required to involve consulting parties in their **historic** preservation activities?

Yes, Federal agencies must solicit information from consulting parties to carry out their responsibilities under **historic** and cultural preservation laws and regulations. Federal agencies must invite the participation of consulting parties through their normal public notification processes.

Sec. 102-78.40 What responsibilities do Federal agencies have when an undertaking adversely affects a **historic** or cultural property?

Federal agencies must not perform an undertaking that could alter, destroy, or modify an **historic** or cultural property until they have consulted with the SHPO and the Advisory Council. Federal agencies must minimize all adverse impacts of their undertakings on **historic** or cultural properties to the extent that is feasible and prudent. Federal agencies must follow the specific guidance on the protection of **historic** and cultural properties in 36 CFR part 800.

Sec. 102-78.45 What are Federal agencies' responsibilities concerning nomination of properties to the National Register?

Federal agencies must nominate to the National Register all properties under their control determined eligible for inclusion in the National Register.

Sec. 102-78.50 What **historic** preservation services must Federal agencies provide?

Federal agencies must provide the following **historic** preservation services:

- (a) Prepare a **Historic** Building Preservation Plan for each National Register or National Register-eligible property under their control. When approved by consulting parties, such plans become a binding management plan for the property; and
- (b) Investigate for **historic** and cultural factors all proposed sites for direct and leased construction.

Sec. 102-78.55 For which properties must Federal agencies assume **historic** preservation responsibilities?

Federal agencies must assume **historic** preservation responsibilities for real property assets under their custody and control. Federal agencies occupying space in buildings under the custody and control

of other Federal agencies must obtain approval from the agency having custody and control of the building.

Sec. 102-78.60 What are Federal agencies **historic** preservation responsibilities when acquiring leased space?

In leasing **historic** property, Federal agencies must give a preference to such leasing actions in accordance with hierarchy of consideration identified in Sec. 102-79.90 of this chapter.

Sec. 102-78.65 What are Federal agencies' **historic** preservation responsibilities when disposing of real property under their control?

Federal agencies must:

(a) To the extent practicable, establish and implement alternatives for **historic** properties, including adaptive reuse, that are not needed for current or projected agency purposes. Agencies are required to get the Secretary of Interior's approval of the plans of transferees of surplus Federally-owned **historic** properties.

(b) Review all proposed excess actions to identify any properties listed on or eligible for listing on the National Register. Federal agencies must not perform disposal actions that could result in the alteration, destruction, or modification of an **historic** or cultural property until Federal agencies have consulted with the SHPO and the Advisory Council.

Sec. 102-78.70 What are an agency's **historic** preservation responsibilities when disposing of another Federal agency's real property?

Federal agencies must not accept property declared excess by another Federal agency nor act as an agent for transfer or sale of such properties until the holding agency provides evidence that the Federal agency has met its National **Historic** Preservation Act

responsibilities.

APPENDIX D. EXECUTIVE ORDER 11593

EXECUTIVE ORDER 11593 May 15, 1971

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.

4701), 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 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.

(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.

THE WHITE HOUSE
RICHARD NIXON.
May 6, 1971.

APPENDIX E. EXECUTIVE ORDER 13006

Locating Federal Facilities on **Historic** Properties in Our Nation's Central Cities
May 21, 1996

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.) and the Public Buildings Cooperative Use Act of 1976 (90 Stat. 2505), and in furtherance of and

consistent with Executive Order No. 12072 of August 16, 1978, and Executive Order No. 11593 of May 13, 1971, it is hereby ordered as follows:

Section 1. Statement of Policy. Through the Administration's community empowerment initiatives, the Federal Government has undertaken various efforts to revitalize our central cities, which have historically served as the centers for growth and commerce in our metropolitan areas. Accordingly, the Administration hereby reaffirms the commitment set forth in Executive Order No. 12072 to strengthen our Nation's cities by encouraging the location of Federal facilities in our central cities. The Administration also reaffirms the commitments set forth in the National **Historic** Preservation Act to provide leadership in the preservation of **historic** resources, and in the Public Buildings Cooperative Use Act of 1976 to acquire and utilize space in suitable buildings of **historic**, architectural, or cultural significance.

To this end, the Federal Government shall utilize and maintain, wherever operationally appropriate and economically prudent, **historic** properties and districts, especially those located in our central business areas. When implementing these policies, the Federal Government shall institute practices and procedures that are sensible, understandable, and compatible with current authority and that impose the least burden on, and provide the maximum benefit to, society.

Section 2. Encouraging the Location of Federal Facilities on **Historic** Properties in Our Central Cities. When operationally appropriate and economically prudent, and subject to the requirements of Section 601 of title Vi of the Rural Development Act of 1972, as amended (42 U.S.C. 3122), and Executive Order No. 12072, when locating Federal facilities, Federal agencies shall give first consideration to **historic** properties within **historic** districts. If no such property is suitable, then Federal agencies shall consider other developed or undeveloped sites within **historic** districts. Federal agencies shall then consider **historic** properties outside of **historic** districts, if no suitable site within a district exists. Any rehabilitation or construction that is undertaken

pursuant to this order must be architecturally compatible with the character of the surrounding **historic** district or properties.

Section 3. Identifying and Removing Regulatory Barriers. Federal agencies

with responsibilities for leasing, acquiring, locating, maintaining, or managing Federal facilities or with responsibilities for the planning for, or managing of, **historic** resources shall take steps to reform, streamline, and otherwise minimize regulations, policies, and procedures that impede the Federal Government's ability to establish or maintain a presence in **historic** districts or to acquire **historic** properties to satisfy Federal space needs, unless such regulations, policies, and procedures are designed to protect human health and safety or the environment. Federal agencies are encouraged to seek the assistance of the Advisory Council on **Historic** Preservation when taking these steps.

Section 4. Improving Preservation Partnerships. In carrying out the authorities of the National **Historic** Preservation Act, the Secretary of the Interior, the Advisory Council on **Historic** Preservation, and each Federal agency shall seek appropriate partnerships with States, local governments, Indian tribes, and appropriate private organizations with the goal of enhancing participation of these parties in the National **Historic** Preservation Program. Such partnerships should embody the principles of administrative flexibility, reduced paperwork, and increased service to the public.

Section 5. Judicial Review. This order is not intended to create, nor does it create, any right or benefit, substantive or procedural, enforceable at law by a party against the United States, its agencies or instrumentalities, its officers or employees, or any other person.

William J. Clinton
The White House
May 21, 1996

APPENDIX F. EXECUTIVE ORDER 13287

Preserve America Executive Order

What follows is the text of Executive Order 13287, Preserve America, signed by President Bush March 3, 2003.

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.

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 & 470h-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.

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.

(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 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.

GEORGE W. BUSH
THE WHITE HOUSE,
March 3, 2003.
#

An independent Federal agency, the Advisory Council on **Historic** Preservation (ACHP) promotes **historic** preservation nationally by providing a forum for influencing Federal activities, programs, and policies that impact **historic** properties, advising the President and Congress, advocating preservation policy, improving Federal preservation programs, protecting **historic** properties, and educating stakeholders and the public. Learn more about ACHP

Updated April 2, 2003

APPENDIX G. RHPO POSITION DESCRIPTION

REGIONAL HISTORIC PRESERVATION OFFICER, GS-13 (1001)

Position serves as the Regional **Historic** Preservation Officer (RHPO), with responsibility for administering the regionwide **Historic** Preservation Program, providing authoritative counsel to agency management, professional colleagues, state officials, private industry and others responsible for facilities management in government-owned and leased buildings. With wide latitude for the exercise of independent judgment, performs functions to ensure regional compliance with the National **Historic** Preservation Act and related regulatory guidance throughout PBS, as well as conveying GSA's stewardship vision and educating PBS staff, management and tenant agencies to build strategic support. Assignments often involve working directly with the Center for **Historic** Buildings in Central Office for the development and application of new or significantly revised program methods and approaches, with the employee's conclusions, recommendations or determinations, resulting in revised operating procedures or allocation of program resources. Work performed requires extended specialized training and experience which demonstrates leadership and marked attainments in the area of **historic** preservation and restoration.

MAJOR DUTIES

1. Individually, or in conjunction with program directors at the Central Office level, develops or significantly contributes to the development of agency-wide policy on a variety of diverse and complex technical, professional or administrative issues related to **historic** preservation and restoration. Provides administrative and technical expertise to GSA personnel; as a recognized expert in the **historic** preservation field, is called upon to review and/or assess problematic or potentially controversial situations which are either out of the ordinary, unique or otherwise unusual in nature. Examples include, highly sensitive projects impacting **historic** properties where negotiations with directors of client agencies and national and state representatives in the **historic** preservation profession are required in order to comply with the laws and serve the clients' needs.

2. Provides technical expertise and actively guides GSA design, construction, site acquisition and other activities affecting **historic** buildings. Serves as designated regional virtual employee and liaison to the Center for **Historic** Buildings, keeping them informed regarding regional preservation issues and project milestones. Makes final determinations on key programmatic decisions related to regional **historic** preservation activities. Exercises specific responsibility for ensuring implementation of and compliance with mandated legal, regulatory and agency requirements and guidance. On a recurring basis, interacts with GSA compliance review agencies, professional historians, architects, archaeologists, planners, and lawyers to ensure that project proposals maintain the property's **historic** integrity. Develops project approaches that are fiscally prudent and realistic, and develops creative strategies to keep **historic** buildings occupied and a viable part of the inventory. Participates with the highest-level management officials in formulating decisions regarding changing responsibilities or business needs, as well as in the design/development and evaluation of ongoing and/or new program issues. As a technical authority, acts as a troubleshooter for heads of services, staff offices and other key management officials on a diverse range of **historic** preservation issues, projects or concerns requiring an overview of the total regional operation with respect to resolving significant, controversial and/or otherwise highly sensitive situations.

Serves as the PBS ARA's principal liaison for **historic** preservation with other Federal agencies, and conducts briefings, discussions and negotiations with high-level agency representatives of facility management organizations. Applies a wide range of qualitative and/or quantitative methods to assess and improve the **historic** preservation program's effectiveness and management processes, projects and systems. Acts as project manager for work affecting **historic** properties, developing scope of work, negotiating architect-engineer contracts and reviewing submissions for studies and design and construction contracts involving regional **historic** properties. Represents the Agency during the design and construction of major building renovations, considering such issues as changes required as the result of functional changes, new

construction requirements, budget cuts and the overall parameters of the renovation project. Participates as liaison between the client and contractor A/E firms in high-level, complex negotiations and serves as an expert technical advisor to construction engineers-in-charge on design and renovation issues. Also serves on regional A/E selection panels for **historic** preservation projects, to assure that the qualifications of the proposed team include sufficient program knowledge and technical expertise. Reviews specific project goals and objectives; monitors the sequence and timing of key program events and milestones and evaluates overall program accomplishment and significant contributions in terms of regional goals. Relative to these functions, also considers the relationship of the organizational component with other programs and key administrative support functions within GSA or in other agencies. Provides input and recommendations regarding projected operations, significant trends, recurring problems and similar management level concerns to organizations(s) impacted.

3. Continually monitors Federal agency operations and studies worldwide design developments to avail GSA of the best available technology and design prototypes related to functional requirements and architectural/**historic** preservation parameters. Maintains ongoing liaison with the Regional Administrator, project managers and other federal agency, private industry and contractor personnel for the purpose of exchanging current data regarding **historic** preservation projects and proposed changes in policies and goals. Interprets laws such as NHPA, policies, regulations and other operating guidelines established by Central Office personnel and provides expert advice and guidance to regional personnel. Coordinates with other regional program components such as Property Acquisition and Realty Services, Property Development, Property Management, Repair and Alteration, and other PBS Divisions and field activities to assure conformity of procedures and interpretation, and in resolving conflicts and other technical issues related to the administration of the program.

Evaluates new or modified **historic** preservation legislation, proposed regulations or agency guidance for projected impact upon the organization's programs, services and resources. Coordinates with other

program areas and offices to determine the impact of the changes. Develops or modifies **historic** preservation program operating guidelines, policies and long-range plans that apply to employees and/or operations throughout the regional organization.

4. In conjunction or coordination with the Central Office, personally prepares agency directives and policy guidance for issuance by the regional ARA, Public Buildings Service. Writes position papers and develops educational material directed towards GSA managers, employees and PBS client agencies; prepares annual reports, briefings and publicity material profiling regional/national preservation activities. Ensures the availability of technical information, preservation guidelines, and information on **historic** buildings to regional staff. Responds to GSA Central Office and external requests for information required in connection with agency reporting requirements and to support national initiatives. Coordinates public outreach activities and conducts briefings, discussions and negotiations with high-level agency representatives, GSA managers and supervisors, contract A-E and construction firms and other external organizations such as preservation advocacy groups and local governmental entities, to resolve controversies and negative perceptions regarding specific initiatives and/or individual projects. Overall, promotes program goals and innovative preservation approaches and develops consensus with all affected parties and organizations, with a view towards optimizing GSA's public relations and furthering the agency's preservation and urban reinvestment goals.

5. Personally or through the efforts of other PBS personnel, manages and accomplishes the most complex work assignments of the **historic** preservation program areas, which involve extremely difficult or controversial projects that require highly specialized experience or broad policy interpretation. Projects regularly require the identification and resolution of precedent-setting and/or highly controversial operational problems. Makes authoritative decisions regarding technical matters, and typically serves as the team leader of other technical specialists assigned to assist in the work. In this capacity, defines the assignments, evaluates findings, advises on questions, directs further inquiry and coordinates all assignments toward effecting resolution of the matter. Directs team

studies and work assignments, and negotiates effectively with management to mediate conflicts and to accept and implement recommendations.

Actively studies, initiates and promotes opportunities for renting unoccupied space in **historic** properties when federal tenants are unavailable, or in instances where the property needs to be temporarily held vacant for future occupancy. From a programmatic perspective, monitors and tracks project and financial data related to Section 111 leasing activities and provides technical advice and interpretation on issues involving revenue generated and spent in connection with such activities. Provides guidance in cases involving difficult or unusual **historic** buildings or blocks of space available for outlease, generally requiring special lease terms and conditions. Identifies and prioritizes ongoing and programmed building projects to ensure that improvement and restoration of **historic** elements and building viability are emphasized, that Department of Interior rehabilitation standards are met, and that funds are obligated and spent in a timely fashion. Depending on the specific space to be outleased, proposed transactions often draw the attention of State and local governments and Congressional interest, and negotiations with prospective clients require the exercise of sensitive judgment, and the ability to weigh alternatives and make decisions at the negotiating table on matters having widespread impact, including resolving any adverse opinion which may be involved.

KNOWLEDGE REQUIRED BY THE POSITION

- Mastery of the field of **historic** preservation and restoration to apply experimental theories and new developments to problems not treatable by accepted methods and to make decisions or recommendations that require significant changes, interpretation or development of important public policies or programs.
- Expert knowledge of Federal laws and regulations, Executive Orders and agency directives and guidelines pertaining to **historic** preservation requirements and GSA compliance provisions. Ability to assess GSA's potential criminal and civil liability resulting from proposed projects, and to

provide sound and authoritative technical guidance on all issues related to **historic** preservation.

- Comprehensive analytical skills to apply a wide range of qualitative and quantitative techniques required for the assessment and improvement of the effectiveness and efficiency of **historic** preservation and related programs; ability to identify problem areas, conduct research, select and evaluate technical data and to make decisions or recommendations for action based on consideration of all programmatic requirements and aspects of a problem.
- Expert technical knowledge of architectural conservation and the principles and practices applicable to a full range of duties concerned with the preservation, restoration, rehabilitation and adaptive use of **historic** buildings. Ability to apply unusual and unique preservation techniques to resolve issues regarding conflicting building systems integration and enhanced utilization of Federal properties.
- Knowledge of the principles and methods used in conducting public affairs duties for regional preservation issues involving internal agency and public information and community relations activities. Skill in interpersonal relations and in written and oral communications required to explain and negotiate the requirements and implementation of **historic** preservation initiatives and Section 111 leasing activities; to present sensitive recommendations to higher authority; to obtain compliance with policies from local activities; to articulate positions/policy of vast technical complexity and to represent the region and agency on task forces.
- Knowledge of the mission, functions and program goals of GSA and the Public Buildings Service for assigned areas of responsibility, including a specific knowledge of the agency's project development objectives related to design and construction, repair and alterations, building management and firesafety issues.
- Thorough knowledge of PBS program and funding authorities related to Section 111 leasing of **historic** properties to non-Federal entities, encompassing regulatory requirements and selection criteria, outleasing policies and regulations, and accepted preservation practices and

priorities; ability to effectively outline these policies to prospective clients, State and local government representatives, and contract brokers in negotiating outlease terms and resolving problem situations.

- Knowledge of Federal contracting and procurement practices as related to the administration of personal and professional services contracts, including the ability to develop and negotiate research contracts for restoration studies, and to review contract drawings.
- Technical knowledge and ability to effectively lead other team personnel in accomplishing major project tasks and milestones.

SUPERVISORY CONTROLS

Works under the general supervision of a designated manager, who sets the overall objectives and resources available. The incumbent develops the deadlines, projects and work to be done with minimal consultation with the supervisor. The incumbent, having developed expertise in the line of work, is responsible for planning and carrying out the assignment; resolving majority of the conflicts that arise; coordinating the work with others as necessary and interpreting policy on own initiative in terms of established objectives. In the majority of assignments, the incumbent also determines the approach to be taken and the methodology to be used. The incumbent keeps the supervisor informed of progress, potentially controversial matters or far-reaching implications. The majority of completed work is reviewed only from an overall standpoint in terms of feasibility, compatibility with other work or effectiveness in meeting requirements or expected results. Technical supervision and review rarely occurs and is usually limited to only the most sensitive issues, accompanied by alternative solutions, or policy problems that may change the scope of an assignment and resources needed.

GUIDELINES

The incumbent operates within broad program guidelines, including general administrative policies, Federal and agency regulations and procedures, and public law and precedents. The available guidelines provide general direction but do not have specific applicability to the wide

variety of situations encountered. The incumbent uses initiative and resourcefulness in deviating from traditional methods or researching trends and patterns to develop new methods, criteria or proposed new policies. Serves as a regional authority to interpret and provide advice on policies, regulations and other operating guidelines for compliance with **historic** preservation and related art/architectural standards.

COMPLEXITY

Assignments include planning, implementing and evaluation of the regional **historic** preservation program and compliance initiatives. The work includes various duties requiring many different and unrelated processes and methods applied to a broad range of activities, and requires significant departures from standard practices and procedures to resolve widespread or critical problems; develop and evaluate new policies, methods, techniques or criteria; and to advise on the interpretation and implementation of new and/or revised procedures. The incumbent performs advanced work in relation to critical **historic** preservation problems and may lead teams carrying out broad assignments in this area. Decisions regarding what needs to be done include major areas of uncertainty in approach, methodology or interpretation and evaluation processes resulting from such elements as continuing changes in program, technological developments or conflicting requirements. Duties are further complicated by the requirement to serve as a technical expert in performing assigned duties, e.g., analyzing proposed construction and renovation plans and formulating solutions to difficult or persistent **historic** preservation compliance problems.

SCOPE AND EFFECT

The purpose of the work is to provide program direction and expert technical advice regarding GSA **historic** preservation efforts. Work performed involves establishing criteria; formulating projects; assessing program effectiveness; or investigating or analyzing a variety of unusual conditions, problems, or questions. The work affects a wide range of agency activities with regard to ensuring that such activities are mutually supportive and conform to **historic** preservation program requirements.

PERSONAL CONTACTS

Personal contacts are with employees, supervisors and managers within the agency, as well as individuals or groups from outside the agency such as heads and staff members of other Federal agencies; attorneys, Judges, Congressional staff; local and state government officials; contractors; representatives of professional organizations; news media and members of the general public. Additional contacts include professionals in the fields of architectural history, architecture, engineering, material culture, community planning and archeology, and with comparable professional and administrative personnel.

PURPOSE OF CONTACTS

The purpose of contacts is to influence and motivate persons or groups to promote **historic** preservation and restoration program initiatives, and to ensure compliance with appropriate public laws, legal decisions and agency directives. The persons contacted may be fearful, skeptical or uncooperative. The incumbent may encounter resistance due to such issues as organizational conflict, competing objectives or resource problems. The incumbent must be skillful in approaching individuals or groups in order to obtain the desired effect, such as influencing managers or other officials to accept and implement findings and recommendations.

PHYSICAL DEMANDS AND WORK ENVIRONMENT

The work is primarily sedentary and is generally performed in an office setting, although there may be significant amount of travel to communities for which project plans are being developed.

REGIONAL HISTORIC PRESERVATION OFFICER, GS-13 (808)

Position serves as the Regional **Historic** Preservation Officer (RHPO), with responsibility for administering the regionwide **Historic** Preservation Program, providing authoritative counsel to agency management, professional colleagues, state officials, private industry and others responsible for facilities management in government-owned and leased

buildings. With wide latitude for the exercise of independent judgment, performs functions to ensure regional compliance with the National **Historic** Preservation Act and related regulatory guidance throughout PBS, as well as conveying GSA's stewardship vision and educating PBS staff, management and tenant agencies to build strategic support. Assignments often involve working directly with the Center for **Historic** Buildings in Central Office for the development and application of new or significantly revised program methods and approaches, with the employee's conclusions, recommendations or determinations, resulting in revised operating procedures or allocation of program resources. Work performed requires extended specialized training and experience which demonstrates leadership and marked attainments in the area of **historic** preservation and restoration.

MAJOR DUTIES

1. Individually, or in conjunction with program directors at the Central Office level, develops or significantly contributes to the development of agency-wide policy on a variety of diverse and complex technical, professional or administrative issues related to **historic** preservation and restoration. Provides administrative and technical expertise to GSA personnel; as a recognized expert in the **historic** preservation field, is called upon to review and/or assess problematic or potentially controversial situations which are either out of the ordinary, unique or otherwise unusual in nature. Examples include, highly sensitive projects impacting **historic** properties where negotiations with directors of client agencies and national and state representatives in the **historic** preservation profession are required in order to comply with the laws and serve the clients' needs.

Provides technical expertise and actively guides GSA design, construction, site acquisition and other activities affecting **historic** buildings. Serves as designated regional virtual employee and liaison to the Center for **Historic** Buildings, keeping them informed regarding regional preservation issues and project milestones. Makes final determinations on key programmatic decisions related to regional **historic** preservation activities. Exercises specific responsibility for ensuring

implementation of and compliance with mandated legal, regulatory and agency requirements and guidance. Monitors regional agency operations and studies national developments in restoration techniques to ensure that GSA functional requirements and architectural needs are reflected in current design policies and standards affecting restoration and preservation of the region's Federal building inventory. On a recurring basis, interacts with GSA compliance review agencies, professional historians, other architects, archaeologists, planners, and lawyers to ensure that project proposals maintain the property's **historic** integrity. Develops project approaches that are fiscally prudent and realistic, and develops creative strategies to keep **historic** buildings occupied and a viable part of the inventory. Participates with the highest-level management officials in formulating decisions regarding changing responsibilities or business needs, as well as in the design/development and evaluation of ongoing and/or new program issues. As a technical authority, acts as a troubleshooter for heads of services, staff offices and other key management officials on a diverse range of **historic** preservation issues, projects or concerns requiring an overview of the total regional operation with respect to resolving significant, controversial and/or otherwise highly sensitive situations.

2. Serves as the PBS ARA's principal liaison for **historic** preservation with other Federal agencies, and conducts briefings, discussions and negotiations with high-level agency representatives of facility management organizations. Assures that **historic** preservation activities are carried out in a consistent and cost-effective manner, and in compliance with applicable design, construction, contracting, buildings management and fire safety policies and objectives prescribed by GSA and the Office of Management and Budget (OMB). Represents the agency during the design and construction of major regional building renovations, and exercises technical responsibility for authorizing changes resulting from functional changes, construction requirements, and the overall scope of the renovation project. In this capacity, serves as an expert advisor to construction engineers and architect-engineer firms on design and renovation matters, and participates in technical discussions to resolve any design problems and/or questions of interpretation that may

arise. As project manager for work affecting **historic** properties, develops the scope of work required, negotiates A-E contracts, develops government cost estimates and administers work performed under contract, and reviews all technical contract proposals involving the region's inventory of **historic** properties. As required by recurring workload, serves on regional A-E selection panels to assure that the qualifications and experience of the proposed team involve the sufficient program knowledge, technical expertise and sensitivity to the integrity of the **historic** structures and preservation issues involved. Reviews specific project goals and objectives; monitors the sequence and timing of key program events and milestones and evaluates overall program accomplishment and significant contributions in terms of regional goals. Relative to these functions, also considers the relationship of the organizational component with other programs and key administrative support functions within GSA or in other agencies. Provides input and recommendations regarding projected operations, significant trends, recurring problems and similar management level concerns to organizations(s) impacted.

3. Continually monitors Federal agency operations and studies worldwide design developments to avail GSA of the best available technology and design prototypes related to functional requirements and architectural/**historic** preservation parameters. Maintains ongoing liaison with the Regional Administrator, project managers and other federal agency, private industry and contractor personnel for the purpose of exchanging current data regarding **historic** preservation projects and proposed changes in policies and goals. Interprets laws such as NHPA, policies, regulations and other operating guidelines established by Central Office personnel and provides expert advice and guidance to regional personnel. Coordinates with other regional program components such as Property Acquisition and Realty Services, Property Development, Property Management, Repair and Alteration, and other PBS Divisions and field activities to assure conformity of procedures and interpretation, and in resolving conflicts and other technical issues related to the administration of the program.

Evaluates new or modified **historic** preservation legislation, proposed

regulations or agency guidance for projected impact upon the organization's programs, services and resources. Coordinates with other program areas and offices to determine the impact of the changes. Develops or modifies **historic** preservation program operating guidelines, policies and long-range plans that apply to employees and/or operations throughout the regional organization.

4. In conjunction or coordination with the Central Office, personally prepares agency directives and policy guidance for issuance by the regional ARA, Public Buildings Service. Writes position papers and develops educational material directed towards GSA managers, employees and PBS client agencies; prepares annual reports, briefings and publicity material profiling regional/national preservation activities. Ensures the availability of technical information, preservation guidelines, and information on **historic** buildings to regional staff. Responds to GSA Central Office and external requests for information required in connection with agency reporting requirements and to support national initiatives. Coordinates public outreach activities and conducts briefings, discussions and negotiations with high-level agency representatives, GSA managers and supervisors, contract A-E and construction firms and other external organizations such as preservation advocacy groups and local governmental entities, to resolve controversies and negative perceptions regarding specific initiatives and/or individual projects. Overall, promotes program goals and innovative preservation approaches and develops consensus with all affected parties and organizations, with a view towards optimizing GSA's public relations and furthering the agency's preservation and urban reinvestment goals.

5. Personally or through the efforts of other PBS personnel, manages and accomplishes the most complex work assignments of the **historic** preservation program areas, which involve extremely difficult or controversial projects that require highly specialized experience or broad policy interpretation. Projects regularly require the identification and resolution of precedent-setting and/or highly controversial operational problems. Makes authoritative decisions regarding technical matters, and typically serves as the team leader of other technical specialists assigned to assist in the work. In this capacity, defines the assignments, evaluates

findings, advises on questions, directs further inquiry and coordinates all assignments toward effecting resolution of the matter. Directs team studies and work assignments, and negotiates effectively with management to mediate conflicts and to accept and implement recommendations.

Actively studies, initiates and promotes opportunities for renting unoccupied space in **historic** properties when federal tenants are unavailable, or in instances where the property needs to be temporarily held vacant for future occupancy. From a programmatic perspective, monitors and tracks project and financial data related to Section 111 leasing activities and provides technical advice and interpretation on issues involving revenue generated and spent in connection with such activities. Provides guidance in cases involving difficult or unusual **historic** buildings or blocks of space available for outlease, generally requiring special lease terms and conditions. Identifies and prioritizes ongoing and programmed building projects to ensure that improvement and restoration of **historic** elements and building viability are emphasized, that Department of Interior rehabilitation standards are met, and that funds are obligated and spent in a timely fashion. Depending on the specific space to be outleased, proposed transactions often draw the attention of State and local governments and Congressional interest, and negotiations with prospective clients require the exercise of sensitive judgment, and the ability to weigh alternatives and make decisions at the negotiating table on matters having widespread impact, including resolving any adverse opinion which may be involved.

KNOWLEDGE REQUIRED BY THE POSITION KNOWLEDGE

- Mastery of professional architectural principles, concepts and practices related to **historic** preservation and restoration, required to serve as a technical expert for major **historic** building renovation projects. A bachelor's degree in architecture, supplemented by progressively responsible experience on increasingly complex architectural conservation/restoration projects is required.
- Knowledge and skill to adapt unconventional design and construction

practices and techniques, to establish design parameters and prepare project justifications and specifications for plans and designs for unique new construction and major renovation projects, which integrate state of the art **historic** preservation and renovation concepts into the design or construction considerations.

- Knowledge of related engineering fields (outside the incumbent's specialty area) to ensure that areas of overlapping technical responsibilities receive proper consideration.
- Expert knowledge of Federal laws and regulations, Executive Orders and agency directives and guidelines pertaining to **historic** preservation requirements and GSA compliance provisions. Ability to assess GSA's potential criminal and civil liability resulting from proposed projects, and to provide sound and authoritative technical guidance on all issues related to **historic** preservation.
- Comprehensive analytical skills to apply a wide range of qualitative and quantitative techniques required for the assessment and improvement of the effectiveness and efficiency of **historic** preservation and related programs; ability to identify problem areas, conduct research, select and evaluate technical data and to make decisions or recommendations for action based on consideration of all programmatic requirements and aspects of a problem.
- Expert technical knowledge of architectural conservation and the principles and practices applicable to a full range of duties concerned with the preservation, restoration, rehabilitation and adaptive use of **historic** buildings. Ability to apply unusual and unique preservation techniques to resolve issues regarding conflicting building systems integration and enhanced utilization of Federal properties.
- Knowledge of the principles and methods used in conducting public affairs duties for regional preservation issues involving internal agency and public information and community relations activities. Skill in interpersonal relations and in written and oral communications required to explain and negotiate the requirements and implementation of **historic** preservation initiatives and Section 111 leasing activities; to present

sensitive recommendations to higher authority; to obtain compliance with policies from local activities; to articulate positions/policy of vast technical complexity and to represent the region and agency on task forces.

- Knowledge of the mission, functions and program goals of GSA and the Public Buildings Service for assigned areas of responsibility, including a specific knowledge of the agency's project development objectives related to design and construction, repair and alterations, building management and firesafety issues.

- Thorough knowledge of PBS program and funding authorities related to Section 111 leasing of **historic** properties to non-Federal entities, encompassing regulatory requirements and selection criteria, outleasing policies and regulations, and accepted preservation practices and priorities; ability to effectively outline these policies to prospective clients, State and local government representatives, and contract brokers in negotiating outlease terms and resolving problem situations.

- Knowledge of Federal contracting and procurement practices as related to the administration of personal and professional services contracts, including the ability to develop and negotiate research contracts for restoration studies, and to review contract drawings.

- Technical knowledge and ability to effectively lead other team personnel in accomplishing major project tasks and milestones.

SUPERVISORY CONTROLS

Works under the general supervision of a designated manager, who sets the overall objectives and resources available. The incumbent develops the deadlines, projects and work to be done with minimal consultation with the supervisor. The incumbent, having developed expertise in the line of work, is responsible for planning and carrying out the assignment; resolving majority of the conflicts that arise; coordinating the work with others as necessary and interpreting policy on own initiative in terms of established objectives. In the majority of assignments, the incumbent also determines the approach to be taken and the methodology to be used. The incumbent keeps the supervisor informed of progress, potentially

controversial matters or far-reaching implications. The majority of completed work is reviewed only from an overall standpoint in terms of feasibility, compatibility with other work or effectiveness in meeting requirements or expected results. Technical supervision and review rarely occurs and is usually limited to only the most sensitive issues, accompanied by alternative solutions, or policy problems that may change the scope of an assignment and resources needed.

GUIDELINES

The incumbent operates within broad program guidelines, including general administrative policies, Federal and agency regulations and procedures, and public law and precedents. The available guidelines provide general direction but do not have specific applicability to the wide variety of situations encountered. The incumbent uses initiative and resourcefulness in deviating from traditional methods or researching trends and patterns to develop new methods, criteria or proposed new policies. Serves as a regional authority to interpret and provide advice on policies, regulations and other operating guidelines for compliance with **historic** preservation and related art/architectural standards.

COMPLEXITY

Assignments include planning, implementing and evaluation of the regional **historic** preservation program and compliance initiatives. The work includes various duties requiring many different and unrelated processes and methods applied to a broad range of activities, and requires significant departures from standard practices and procedures to resolve widespread or critical problems; develop and evaluate new policies, methods, techniques or criteria; and to advise on the interpretation and implementation of new and/or revised procedures. The incumbent performs advanced work in relation to critical **historic** preservation problems and may lead teams carrying out broad assignments in this area. Decisions regarding what needs to be done include major areas of uncertainty in approach, methodology or interpretation and evaluation processes resulting from such elements as continuing changes in program, technological developments or conflicting

requirements. The employee's actions constitute initial, and in many cases, the final agency recommendation or decision concerning the technical adequacy of a project's design; duties are further complicated by the requirement to serve as a technical expert in analyzing proposed construction and renovation plans and formulating solutions to difficult or persistent **historic** preservation problems.

SCOPE AND EFFECT

The purpose of the work is to provide program direction and expert technical advice regarding GSA **historic** preservation efforts. Work performed involves establishing criteria; formulating projects; assessing program effectiveness; or investigating or analyzing a variety of unusual conditions, problems, or questions. The work affects a wide range of agency activities with regard to ensuring that such activities are mutually supportive and conform to **historic** preservation program requirements.

PERSONAL CONTACTS

Personal contacts are with employees, supervisors and managers within the agency, as well as individuals or groups from outside the agency such as heads and staff members of other Federal agencies; attorneys, Judges, Congressional staff; local and state government officials; contractors; representatives of professional organizations; news media and members of the general public. Additional contacts include professionals in the fields of architectural history, architecture, engineering, material culture, community planning and archeology, and with comparable professional and administrative personnel.

PURPOSE OF CONTACTS

The purpose of contacts is to influence and motivate persons or groups to promote **historic** preservation and restoration program initiatives, and to ensure compliance with appropriate public laws, legal decisions and agency directives. The persons contacted may be fearful, skeptical or uncooperative. The incumbent may encounter resistance due to such issues as organizational conflict, competing objectives or resource problems. The incumbent must be skillful in approaching individuals or

groups in order to obtain the desired effect, such as influencing managers or other officials to accept and implement findings and recommendations.

PHYSICAL DEMANDS AND WORK ENVIRONMENT

The work is primarily sedentary and is generally performed in an office setting, although there may be significant amount of travel to communities for which project plans are being developed.

▶ Validation