

WEST VIRGINIA
SECRETARY OF STATE
KEN HECHLER
ADMINISTRATIVE LAW DIVISION

Form #4

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OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

NOTICE OF RULE MODIFICATION OF A PROPOSED RULE

AGENCY: Division of Culture and History TITLE NUMBER: 82

CITE AUTHORITY WV Code § 29-1-8d

AMENDMENT TO AN EXISTING RULE: YES X NO

IF YES, SERIES NUMBER OF RULE BEING AMENDED: 1

TITLE OF RULE BEING AMENDED: Certified Local Government Program

IF NO, SERIES NUMBER OF NEW RULE BEING PROPOSED:

TITLE OF RULE BEING PROPOSED:

THE ABOVE PROPOSED LEGISLATIVE RULE, FOLLOWING REVIEW BY THE LEGISLATIVE RULE
MAKING REVIEW COMMITTEE IS HEREBY MODIFIED AS A RESULT OF REVIEW AND COMMENT
BY THE LEGISLATIVE RULE-MAKING REVIEW COMMITTEE. THE ATTACHED MODIFICATIONS ARE
FILED WITH THE SECRETARY OF STATE.

Authorized Signature

PLEASE SEE ATTACHED LETTER

\$13.00

WEST VIRGINIA STATE COLLEGE

Institute, West Virginia
25112-1000



Department of History

STATE HISTORIC
PRESERVATION
OFFICE

DEC 2 1998

RECEIVED

The Honorable Ken Hechler
Secretary of State
State Capitol Building #1
1900 Kanawha Boulevard East
Charleston, WV 25305

Dear Secretary Hechler:

Greetings, Mr. Secretary. I hope the blessings of the Thanksgiving holiday were bountiful for you and yours. Christmas fast approaches with all its warmth and beauty.

Part of my duty as Chairman of the West Virginia Archives and History Commission is to inform your office of the commission's approval of changes in the Legislative Rules governing the Division of Culture and History. I have attached the relevant passages from our official minutes.

On June 21, 1996, the West Virginia Archives and History Commission approved proposed changes to the following Division of Culture and History Legislative Rules:

- Title 82, Series 1: Certified Local Government Program
- Title 82, Series 2: Standards and Procedures for Administering State Historic Preservation Program

On another note, here at West Virginia State College our Division of Social Sciences has planned a special unit on the Executive Branch, as the enclosed attachment attests. I rather think it would be inappropriate to host such an academic session without your honored presence. I shall call you early in the year.

Keep up the good work, and as always, if I can help in any way, please do not hesitate to call upon me.

Your Obedient Servant.

C. Stuart McGehee
Associate Professor
Chair

CSM/jbg

cc: Ms. Susan Pierce

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TITLE 82
LEGISLATIVE RULES
~~DEPARTMENT~~ DIVISION OF CULTURE AND HISTORY

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OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

SERIES 1
CERTIFIED LOCAL GOVERNMENT PROGRAM

§82-1-1. General.

Scope. — ~~These regulations~~ This rule establishes ~~general rules~~ guidelines for the certification of local governments to participate in the National Historic Preservation Program with the state and allow local governments to apply for matching funds with the State Historic Preservation Officer and to review nominations of properties to the National Register of Historic Places.

1.2. Authority. — W.Va. Code ~~§ 29-1-6 (5)~~ § 29-1-8 (d), § 8-26A-1

1.3. Filing Date. — ~~June 5, 1985~~

1.4. Effective Date. — ~~June 17, 1985~~

§82-1-2. Definitions.

2.1. "Local Government" ~~is~~ means a city, county, municipality, or other general purpose political subdivision of the state.

2.2. "Historic Landmark Commission (HLC)" or "Commission" means a board, council, commission, or other similar body established by state or local legislation to document historic properties and advise other county or local agencies on resource protection.

2.3. "Certified Local Government (CLG)" means any local government certified as meeting the requirement set forth in this document.

2.4. "State Historic Preservation Officer (SHPO)" means the official in the ~~Department~~ Division of Culture and History appointed by the Governor to carry out the provisions of the National Historic Preservation Act of 1966, as amended, in West Virginia.

2.5. "Secretary" means the United States Secretary of the Interior.

2.6. "Professional" means a person with a degree in one of the following fields: history, architecture, architectural history, planning, real estate, American studies, geography, landscape architecture, law engineering, or archaeology, and who meets the standards outlined in 36 CFR 61.

§82-1-3. Introduction.

3.1. General purposes. Since 1966, when Congress established a preservation program for the United States, the National Historic Preservation Program has operated as a decentralized partnership between the federal government and the states. In the simplest of terms, the federal government established a program of identification, evaluation and protection of historic properties which the states, primarily, carry out. The success of that working relationship prompted Congress to expand the partnership to provide for participation by local governments. The National Historic Preservation Amendments Act of 1980 (P.L. 96-515), as amended, contains the legal basis for the new federal-state-local preservation partnership. The Federal Law directs the State Historic Preservation Officer and the Secretary of the Interior to certify local governments to participate in this partnership and specifies several requirements which the local government must meet. The purpose of these regulations this rule is to implement that the Federal-State-Local preservation partnership in West Virginia as provided for in The National Historic Preservation Amendments Act of 1980 (P.L. 95-515), as amended. The role of the "Certified Local Governments" in the partnership involves (1) eligibility to apply to the State Historic Preservation Officer, for matching funds earmarked for "Certified Local Governments," and (2) responsibility for review of nominations of properties to The National Register of Historic Places. C.L.G.'s CLGs will help to promote the preservation of prehistoric and historic sites, structures, objects, buildings and historic districts by establishing a partnership between the local government and the West Virginia State Historic Preservation Office (SHPO), a unit of the West Virginia Department Division of Culture and History, which seeks to encourage and expand local involvement in preservation issues. This partnership will help to ensure that: Historic preservation issues are understood and addressed at the local level; local interests and concerns are identified in the evaluation and nomination process of the SHPO; information concerning local historic preservation issues is provided to the SHPO and to the public; local landmark legislation and historic preservation Commissions are established in localities where they do not yet exist and are updated, if necessary, where they already exist; existing inventory data and technical information is made available to the local community preservation needs.

In order to become certified, a local government must meet several requirements, chief of which are to have enacted an historic preservation ordinance and appointed a qualified Historic Preservation Commission. The Federal Act directs the State Historic Preservation Officer (SHPO) and the Secretary of the Interior to certify local governments to participate in the partnership.

§82-1-4. Requirements for certification of local government programs in West Virginia.

4.1. Enforcement. The local government must "enforce appropriate state or local legislation laws, requirements, and ordinances for the designation and protection of historic properties.²²

4.1.a. (a) The local government must ~~have established~~, through ordinance or county order, a municipal or county Historic Landmark Commission ~~or Commission under in accordance~~

~~with provisions of the West Virginia State Code, article twenty-six-a, chapter eight § 8-26A-1 et seq.~~

4.1.b. ~~(b)~~ The Commission must establish a clearly defined process for the local designation and protection of significant individual historic properties (landmarks) and/or historic districts. Both the criteria for determining significant properties and the procedure for designating and protecting those properties must be defined. A copy of guidelines can be obtained upon request from the West Virginia State Historic Preservation Office. ~~Additionally, the local government must have the legal capacity to enforce legislation that is on or may be on the books relating to the designation and protection of properties.~~

4.2. Establishment of review Commission. Local government shall “Have established an adequate and qualified Historic Preservation Review Commission by state or local legislation.”

4.2.a. ~~(a)~~ The local government ~~shall have~~ must created a Historic Landmark Commission (HLC) ~~or Commission~~, consisting of five (5) members, to carry out the provisions of the ordinance or order.

4.2.b. ~~(b)~~ HLC ~~or Commission~~ membership shall be drawn from among persons with demonstrated interest, competence or knowledge in historic preservation and local history. To the extent available in the community, members of the HLC shall be preservation-related professionals ~~(including the professions of history, architecture, architectural history, planning, real estate, American studies, geography, landscape architecture, law, engineering or archaeology.~~ Members who are not professionally qualified shall demonstrate avocational experience in preservation and associated disciplines. When a discipline is not represented in the Commission membership, commissioners shall seek expertise in this area when reporting on National Register nominations and other actions that will impact properties which are normally evaluated by a professional in such discipline. This may be accomplished through consultation with universities or colleges. Prior to the consultation process, the Commission must notify the State Historic Preservation Officer in writing that the appropriate professional assistance has been obtained and identified.

4.2.c. ~~(c)~~ The local government, to be certified without the minimum number or types of professional disciplines, must report to the SHPO’s satisfaction that it has made a reasonable effort to fill those positions. The requirements for professional representation on the Commission shall not exceed those of the State Review Board.

4.2.d. ~~(d)~~ Commission meetings shall be held at regular intervals at least four (4) times each year, advertised in advance and open to the public in accordance with the provisions of West Virginia Code § 6-9A-1 et seq. The Commission shall establish rules of procedure or bylaws including a code of conduct, using standards established by the West Virginia Open Meeting Law, § 6-9A-1 et seq.

4.2.e. ~~(e)~~ The Commission shall transmit an annual report of its activities to the State Historic Preservation Officer. ~~Such~~ The reports shall include, at a minimum, new designations made,

progress on survey activities and commission attendance records. ~~The R~~reports shall be submitted within sixty (60) days after the end of the fiscal year for the local government or portion of the fiscal year in the first year of the establishment of the Commission. These reports will be reviewed and evaluated by the SHPO to ensure that the Commission's activities are consistent with the State Historic Preservation Plan. The annual report will adhere to the guidelines established by the SHPO. A copy of report guidelines can be obtained from the State Historic Preservation Office.

4.2.f. ~~(f)~~ The Commission shall monitor and report to the State Historic Preservation Officer any activity affecting any property in its jurisdiction listed in the National Register of Historic Places.

4.2.g. ~~(g)~~ Records of proceedings shall be transmitted to the members of the Commission.

4.2.h. ~~(h)~~ In addition to the above stated duties and those specified in ~~the State Code, article twenty-six-a, chapter eight~~ West Virginia Code § 8-26A-5, the Commission shall report on all proposed National Register nominations for properties within the boundaries of the CLG's jurisdiction. When a Commission reviews a nomination ~~which~~ that is normally evaluated by a professional in a specific discipline, and that discipline is not represented on the Commission, the Commission must seek expertise in that discipline before rendering its decision. This can be accomplished ~~through by consulting with the appropriate professional or by other means that with the SHPO has determined to be appropriate.~~

4.2.i. ~~(i)~~ Commission responsibilities must be complementary to and carried out in coordination with those of the State Historic Preservation Office as outlined in 36 CFR 61.4 (b) (please see Appendix C). The State Historic Preservation Office shall cooperate with the HLC or Commission by making available materials and training to provide a working knowledge of the roles and operations of federal, state and local preservation programs.

4.3. System for survey and inventory. The local government must maintains a system for the survey and inventory of historic properties.

4.3.a. ~~(a)~~ The local government must carry out a systematic and professionally comprehensive method of inventories of historic properties as outlined in the SHPO's West Virginia Historic Resource Survey Handbook, obtainable from the State Historic Preservation Office. This survey information must be clearly organized and accessible to the public. The State Historic Preservation Office should be consulted in the initial development of such a system and inventory forms should be those used by the State Historic Preservation Officer. The local inventory should also clearly indicate those properties which have been designated local landmarks as well as those listed on the National Register of Historic Places. The local government survey shall in all cases be coordinated with and complementary to those of the state.

4.3.b. ~~(b)~~ The local government must submit a copy of inventory documentation for

all locally surveyed resources to the State Historic Preservation Office within a 6 month time frame.

4.3.c. ~~(c)~~ The State Historic Preservation Office may request additional survey and inventory data from the local government as part of the development of the state's comprehensive planning process ~~(RP3)~~.

4.3.d. ~~(d)~~ All inventory material shall be updated every third year to reflect changes, alterations and demolitions.

4.4. Public participation. Local governments must provide for adequate public participation in the local Historic Preservation Programs, including the process of recommending properties for nomination to The National Register, as outlined in 36 CFR 61.5 (c) (4.) (See Appendix C).

4.4.a. ~~(a)~~ All meetings of the Commission shall adhere to the West Virginia Open Meetings Law, ~~section one, article nine-a, chapter six et seq. § 6-9A-1, et seq.~~ If the meeting place does not conform to American Disability Act standards, the public notice shall allow for requests for accommodation.

4.4.b. ~~(b)~~ Careful minutes shall be kept of all actions taken by ~~and all responsibilities of~~ the Commission and must be kept on file and available to the public upon request.

4.4.c. ~~(c)~~ The SHPO and the CLG will cooperate to provide adequate opportunity for public participation in the nomination of properties to the National Register. All reports submitted by the CLG to the SHPO regarding historic properties shall include assurances of public input. The CLG shall retain a list of all persons contracted during the review and comment period and record responses which they received. If a public meeting was held, a list of those attending shall be included in the report.

4.4.d. ~~(d)~~ The local government must perform the responsibilities delegated to it under the National Historic Preservation Act of 1966, as amended (16 U.S.C. § 470) and all regulations promulgated there under (See Appendix A).

§82-1-5. Process for certification of local governments in West Virginia.

5.1. Request for certification. The chief elected official of the appropriate local governing body shall request certification from the West Virginia Historic Preservation office. The request for certification shall include the following:

5.1.a. ~~(a)~~ A written assurance by the chief elected official that the local government does fulfill all the standards for certification outlined above;

5.1.b. ~~(b)~~ A copy of the local historic landmark ordinance or order;

5.1.c. ~~(c)~~ A listing of districts and designated historic landmarks under the local

ordinance together with statements of the historical significance of the properties and maps including their showing the locations of each district and landmark.

5.1.d. ~~(d)~~ Resumes of each of the members of the Historic Landmark Commission including credentials of documenting the members' expertise in fields related to historic preservation. In cases where no professional members have been appointed to an HLC, then an explanation and information demonstrating good faith efforts to obtain such members shall be included; and

5.1.e. ~~(e)~~ A set of goals and objectives for the coming year.

5.2. State Historic Preservation Office response to local government request. The West Virginia State Historic Preservation Office shall respond to the chief elected official within sixty (60) days of the receipt of an adequately documented written request. The request for certification may be made at any time throughout the year and is separate from requests for funding from the Historic Preservation Fund.

5.3. Determination that local government fulfills requirements for certification. If the ~~SHPO State Historic Preservation Officer~~ determines that the local government fulfills the requirements for certification, the ~~SHPO State Historic Preservation Officer~~ will prepare a written certification agreement with the local government that lists the specific responsibilities of the local government ~~where certified~~. These responsibilities will include those powers and duties as stated in subsection 4.2 of these rules. The SHPO will notify the United States Secretary of the Interior or his or her designee and furnish a copy of the approved request and the certification agreement. The SHPO and shall ~~notify~~ respond to the local government within fifteen (15) days of the Secretary's response.

5.4. Local government certification to participate. The local government shall be certified to participate in the National Historic Preservation Program if no comment is received by the SHPO from the Secretary of the Interior within fifteen (15) working days. The certification agreement between the SHPO and the local government ~~will then be~~ becomes final.

5.5. Local government condition for continued certification. Once a local government is certified it remains certified without further action unless ~~after substantive review, the SHPO recommends and proceeds with decertification or the local government requests that they no longer be certified~~ it is decertified.

§82-1-6. Certified local government participation in the nomination process for the National Register of Historic Places (National Historic Preservation Act of 1966, as amended, 16 U.S.C. § 470 Section 101 (c) (2)).

6.1. Notification of the Commission ~~of by the~~ SHPO of National Register nomination of property within local government jurisdiction. 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 in writing 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 for inclusion on the National Register. When the National Register nomination materials have been prepared by the HLC or have been received first by the HLC, the HLC may provide its recommendation and report at the same time it submits a copy of the nomination package to the SHPO for review and comment. When the HLC receives a nomination for comment from the SHPO, it shall have sixty (60) days to submit its recommendation to the SHPO. Within sixty (60) 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 Subsection 6.2 below, after receipt of such report and recommendation or if no such report and recommendation are received within sixty (60) days, the state shall make the nomination pursuant to section 101 (a) of the National Historic Preservation Act, as amended. The state may expedite such process with the concurrence of the certified local government.

6.2. Commission and chief local elected official recommend that a property not be nominated to the National Register. (National Historic Preservation Act of 1966, as amended, 16 U.S.C. § 470 Section 101 (c) (2) (b)) (See Appendix A). If both the Commission and the chief local elected official recommend that a property not be nominated to the National Register, the ~~SHPO~~ State Historic Preservation Officer shall take no further action, unless within thirty (30) 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 36 CFR 60 (See Appendix B) established procedures (section 101 (a) of the Act). Any report and recommendation made under this subsection shall be included with any nomination submitted by the state to the Secretary.

6.3. Commission option for required professional qualifications and review of National Register nominations. All nominations, when sent by the State Historic Preservation Officer to the HLC ~~or Commission~~ for comment, will be classified as primarily historic, archaeological, and/or architectural in nature.

If an HLC ~~or Commission~~ does not have a professional member with the necessary federal qualifications in the area, the HLC can obtain the opinion of a qualified professional in the area and consider their opinion in their recommendation.

~~6.4. Commission qualification for federal pass through funds. Federal regulations also require that Commissions possess certain qualifications in order to receive federal pass through funds. These are explained in Section 4.2 of these rules.~~

§82-1-7. Process for monitoring and decertification of certified local governments.

7.1. Performance review of certified local government by SHPO. The SHPO will review the Commission's annual report to ensure that the performance of the local government is consistent with the State Historic Preservation Plan. If the SHPO determines that the performance of a certified

with the State Historic Preservation Plan. If the SHPO determines that the performance of a certified local government is not in conformance with the certification agreement and the State Historic Preservation Plan, the ~~SHPO~~ State Historic Preservation Officer shall document that determination and recommend to the certified local government steps which may be taken to improve their performance. The SHPO shall provide advice and assistance when CLG performance is inadequate. The Historic Preservation Officer shall also review the administration of funds allocated from the Historic Preservation Fund ~~and other documents as necessary~~. The SHPO shall permanently maintain written records for all SHPO evaluations of ~~CLG's~~ CLGs ~~so that they may~~ which will be available to the Secretary at any time.

7.2. Timetable for ~~CLG~~ CLG improvement. The certified local government shall have no less than thirty (30) days nor more than one hundred twenty (120) days to implement improvements acceptable to the State Historic Preservation Officer. ~~The SHPO shall provide advice and assistance when CLG performance is inadequate.~~

7.3. Revocation of certification. If the State Historic Preservation Officer determines that the CLG does not meet the minimum qualifications as stated in subsection 4.2 ~~sufficient improvement has not occurred~~, the State Historic Preservation Officer shall recommend the revocation of the certification of the certified local government to the Secretary citing specific reasons for the recommendation. If the local government is decertified, the SHPO will terminate any financial assistance and will conduct a close-out ~~up~~ review of any funds received from the SHPO by the CLG. ~~This close out will follow procedures specified in the National Register Program Guidelines.~~

7.4. Final approval for ~~CLG~~ CLG decertification. SHPO recommendation(s) for CLG decertification shall be approved and final if the Secretary does not object within thirty (30) days of receipt of SHPO recommendations for decertification.

§82-1-8. Transfer of historic preservation funds to certified local governments.

8.1. General purposes. Federal funding is available to CLGs in accordance with The National Historic Preservation Act of 1966, as amended, 16 U.S.C. § 470 et seq. Funding will be transferred to the CLGs in accordance with procedures outlined in 36 CFR 61. A minimum of ten percent (10%) of the state's annual apportionment from the Historic Preservation Fund of the Department of the Interior will be set aside for transfer to qualified CLG's in accordance with the National Historic Preservation Act as amended. In any year in which the total Historic Preservation Fund appropriation exceeds sixty-five (65) million dollars, one half (1/2) of the amount over sixty-five (65) million dollars will also be transferred to CLG according to procedures to be provided by the Secretary.

~~8.2. Grants awards basis, application, and eligible activities. All CLG's are eligible to apply for funds but will not automatically receive funds. Grants will be awarded on a competitive basis. Applications for funds will be separate from applications for certification. Applications for funds will be evaluated by the SHPO and reviewed by the State Review Board and, recommendations will be made to the West Virginia Archives and History Commission. In general, eligible activities will~~

include any project which further the goals of identification, evaluation, nomination and protection for the community's cultural resources and allows the CLG to carry out the minimum requirements specified in its local legislation to responsibilities delegated to it by the State Historic Preservation Officer. This could include survey, reviewing nominations and of properties to the National Register, public education programs, planning studies and research. Priority will be given to projects which assist in the establishment of a process for incorporation of the consideration of historic preservation goals and objectives with the community's planning process, which increase the community's awareness and understanding of historic preservation values or increase the capability and effectiveness of the local government in addressing local historic preservation issues and needs.

8.3.—Project eligibility in accordance with National Register Programs Manual. All funded projects must be eligible for assistance in accordance with the National Register Programs Manual and must be consistent with the West Virginia comprehensive historic preservation planning process (RP3).

8.4.—Distribution of funds to produce impact and measurable results. The SHPO will make every effort to distribute the funds set aside for CLG's to the maximum number of jurisdictions to the extent such distribution is consistent with 35 CFR 61.7 (f) (1) which states that the amount awarded to any applicant must be sufficient to produce a specific impact. This requirement to provide sufficient funds to produce measurable results cannot be waived regardless of the number of eligible CLG's which apply for funds.

Under normal circumstances no CLG will receive more than thirty percent (30%) of the total amount of funds available from the CLG set aside. The SHPO will also seek a reasonable distribution between urban and rural areas. The SHPO will make available, upon request, the rationale for the applicants selected and the amount awarded.

8.5.—Application and selection criteria. Project application forms and selection criteria will be made available through individual notification and public advertisement from the SHPO of the West Virginia Department of Culture and History in June of each year. The criteria will be coordinated with those used to select survey and planning grants during that fiscal year. Funds must be applied for by August 30 of each year. Funding in any prior year does not guarantee continued funding. The project schedule and deadlines may vary from year to year and is dependent upon the time frame in which the Secretary of the Interior notifies the state of its apportionment from the annual Historic Preservation Fund.

8.6.—Subgrantee requirements and financial management. All CLG's which receive funding are considered subgrantees of the state and must adhere to all requirements of the National Register Programs Manual and maintain an adequate financial management system as specified in Office of Management and Budget Circular A-102 Attachment G — ("Standards for Grantee Financial Management Systems") as well as any specific requirements mandated by Congress regarding the use of such funds. Local financial management systems shall be auditable in accordance with the general accounting office's standards for audit of governmental organizations, programs, activities & functions. The SHPO is responsible for proper accounting of Historic Preservation Fund grants to

~~CLG's in accordance with Office Management and Budget Circular A-102, Attachment P Audit Requirements. Grants made from the Historic Preservation Fund cannot be used as matching share for other federal grants. Only direct costs may be charged as part of the project unless the CLG has a current indirect cost rate approved by a cognizant federal agency.~~

~~8.7. Limitation of use of funds. Use of federal funds will be limited by all existing restrictions imposed by the federal government. The intent of Historic Preservation Fund assistance is to augment, not replace, existing local commitment to historic preservation activities.~~

~~8.8. National Register review and funding application. Certification of local governments and their participation in review and approval of National Register nominations is not dependent upon whether or not the CLG elects to apply for or receives funds from the CLG set aside.~~

Appendix A

National Historic Preservation Act As Amended Through 1996

(The wording of the "National Historic Preservation Act Amendments of 1992" is as passed in Title XL of HR429. HR429 also contains an amendment to An Act to Establish the Martin Luther King, Jr. National Historic Site in the State of Georgia, Public Law 96-428; 94 Stat. 1839, which has not been reprinted.)

AN ACT to Establish a Program for the Preservation of Additional Historic Properties throughout the Nation, and for Other Purposes, Approved October 13, 1966 (Public Law 89-665; 80 Stat. 915; 16 U.S.C. 470) as amended by Public Law 91-243, Public Law 93-54, Public Law 94-422, Public Law 94-458, Public Law 96-199, Public Law 96-244, Public Law 96-515, Public Law 98-483, Public Law 99-514, Public Law 100-127, and Public Law 102-575, Public Law 103-437, Public Law - 104-333).

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

Short title

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

Purpose of the Act

(b) The Congress finds and declares that--

- (1) the spirit and direction of the Nation are founded upon and reflected in its historic heritage;
- (2) the historical and cultural foundations of the Nation should be preserved as a living part of our community life and development in order to give a sense of orientation to the American people;
- (3) historic properties significant to the Nation's heritage are being lost or substantially altered, often inadvertently, with increasing frequency;
- (4) the preservation of this irreplaceable heritage is in the public interest so that its vital legacy of cultural, educational, esthetic, inspirational, economic, and energy benefits will be maintained and enriched for future generations of Americans;
- (5) in the face of ever-increasing extensions of urban centers, highways, and residential, commercial, and industrial developments, the present governmental and nongovernmental historic preservation programs and activities are inadequate to ensure future generations a genuine opportunity to appreciate and enjoy the rich heritage of our Nation;
- (6) the increased knowledge of our historic resources, the establishment of better means of identifying and administering them, and the encouragement of their preservation will improve the planning and execution of Federal and federally assisted projects and will assist economic growth and development; and
- (7) although the major burdens of historic preservation have been borne and major efforts initiated by private agencies and individuals, and both should continue to play a vital role, it is nevertheless necessary and appropriate for the Federal Government to accelerate its historic preservation programs and activities, to give maximum encouragement to agencies and individuals undertaking preservation by private means, and to assist State and local governments and the National Trust for Historic Preservation in the

United States to expand and accelerate their historic preservation programs and activities

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

Declaration of policy of Federal Government

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

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

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

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

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

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

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

TITLE I

Section 101 (16 US.C 470a)

National Register of Historic Places, expansion and maintenance

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

National Historic Landmarks, designation

(B) Properties meeting the criteria for National Historic Landmarks established pursuant to paragraph (2) shall be designated as "National Historic Landmarks" and included on the National Register, subject to the requirements of paragraph (6). All historic properties included on the National Register on December 12, 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 (49Stat. 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 historical and archeological associations, shall establish or revise criteria for properties to be included on the National Register and criteria for National Historic Landmarks, and shall also promulgate or revise regulations as may be necessary for--

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

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

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

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

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

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

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

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). 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 a historic district, shall be given the opportunity (including a reasonable period of time) to concur in, or object to, the nomination of the property or district for such inclusion or designation. If the owner or owners of any privately owned property, or a majority of the owners of such properties within the district in the case of a historic district, object to such inclusion or designation, such property shall not be included on the National Register or designated as a National Historic Landmark until such objection is withdrawn. The Secretary shall review the nomination of the property or district where any such objection has been made and shall determine whether or not the property or district is eligible for such inclusion or designation, and if the Secretary determines that such property or district is eligible for such inclusion or designation, he shall inform the Advisory Council on Historic Preservation, the appropriate State Historic Preservation Officer, the appropriate chief elected local official and the owner or owners of such property, of his determination. The regulations under this paragraph shall include provisions to carry out the purposes of this paragraph in the case of multiple ownership of a single property.

Regulations for curation, documentation, and local government certification

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

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

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

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

Secretary's review of significant threats to historic properties

(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 maybe threatened;

(B) ascertain the causes of the threats; and

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

State Historic Preservation Programs

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

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;

(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);

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

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

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

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

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 the date of the enactment of the National Historic Preservation Act Amendments of 1992.

Contracts or cooperative agreements between the Secretary and a SHPO

(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.

Restrictions on contracts or cooperative agreements

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

- (i) the State Historic Preservation Officer has requested the additional responsibility;
- (ii) the Secretary has approved the State historic preservation program pursuant to section 101(b) (1) and (2);
- (iii) the State Historic Preservation Officer agrees to carry out the additional responsibility in a timely and efficient manner acceptable to the Secretary and the Secretary determines that such Officer is fully capable of carrying out such responsibility in such manner;
- (iv) the State Historic Preservation Officer agrees to permit the Secretary to review and revise, as appropriate in the discretion of the Secretary, decisions made by the Officer pursuant to such contract or cooperative agreement; and
- (v) the Secretary and the State Historic Preservation Officer agree on the terms of additional financial assistance to the State, if there is to be any, for the costs of carrying out such responsibility.

Specific conditions and criteria

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

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

Certification of local governments

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

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

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

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

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

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

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

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 section 101(a). The State may expedite such process with the concurrence of the certified local government.

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

(3) Any local government certified under this section or which is making efforts to become so certified shall be eligible for funds under the provisions of section 103(c) of this Act, and shall carry out any

responsibilities delegated to it in accordance with such terms and conditions as the Secretary deems necessary or advisable.

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

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

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

Program for assistance to Indian tribes

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

Consideration of tribal values

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

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

Tribal assumption of State Historic Preservation Officer functions

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

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

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

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

(D) the Secretary determines, after consultation with the tribe, the appropriate State Historic Preservation Officer, the Council (if the tribe proposes to assume the functions of the State Historic Preservation Officer with respect to review of undertakings under section 106), and other tribes,

if any, whose tribal or aboriginal lands may be affected by conduct of the tribal preservation program--

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

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

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

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

Consultation procedures for tribal programs and section 103(a)

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

Contracts for tribal preservation programs

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

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

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

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

(i) the tribe's traditional cultural authorities,

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

(iii) the interested public.

Review of undertakings under tribal preservation regulations instead of section 106

(5) The Council may enter into an agreement with an Indian tribe to permit undertakings on tribal land to be reviewed under tribal historic preservation regulations in place of review under regulation promulgated by the Council to govern compliance with section 106, if the Council after consultation with the

tribe and appropriate State Historic Preservation Officers, determines that the tribal preservation regulations will afford historic properties consideration equivalent to those afforded instead of by the Council's regulations.

Traditional religious and cultural properties eligible for 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.

Section 106 review and religious and cultural properties

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

Native Hawaiian organizations

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

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

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

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

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

Direct grants for threatened National Historic Landmarks, demonstration projects, 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. 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 and loans to minority groups

(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.

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 Federated States of Micronesia and Marshall Islands, Trust Territory of the Pacific Islands, and Government of 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 Government 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.

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.

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 title.

Preservation standards for federally owned properties

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

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.

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;

(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)

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);

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

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

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

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

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

Waiver for 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.

Limitation on matching

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

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

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

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

Apportionment of survey and planning 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.

Apportionment of project and program grants

(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.

Apportionment to certified local governments

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

Guidelines for apportionment to local governments

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

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

Insured loans for National Register properties

(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.

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.

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 and subsection (g) and (i) of this section, as in effect on the date of the enactment of the Act but which has not been appropriated for any purpose.

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.

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.

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).

Conveyance of foreclosed property

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

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

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 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.

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.

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).

Prohibition against acquisition by Federal Financing Bank

(k) No debt obligation which is made or committed to be made, or which acquisition by 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, \$150,000,000 for fiscal year 1981, and \$150,000,000 for each of fiscal years 1982 through 1997, from revenues due and payable to the United States under the Outer Continental Shelf Lands Act (67

Stat. 462, 469) as amended (43 U.S.C. 338) and/or under the Act of June 4, 1920 (41 Stat. 813) as amended (30 U.S.C. 191), notwithstanding any provision of law that such proceeds shall be credited to miscellaneous receipts of the Treasury. Such moneys shall be used only to carry out the purposes of this Act and shall be available for expenditure only when appropriated by the Congress. Any moneys not appropriated shall remain available in the fund until appropriated for said purposes: Provided, that appropriations made pursuant to this paragraph may be made without fiscal year limitation.

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

Donation to the Secretary

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

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.

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)

Federal agencies' responsibility to preserve and use historic buildings

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

Protection and nomination to the National Register of Historic Places

(2) Each Federal agency shall establish (unless exempted pursuant to

section 214), in consultation with the Secretary, a preservation program for the identification, evaluation, and nomination to the National Register of Historic Places, and protection of historic properties. Such program shall ensure--

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

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

Potentially affected historic properties

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

Consultation over preservation-related activities

(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

Compliance with section 106

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

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

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

Compliance with Native American Graves Protection and Repatriation Act

(iii) provide for the disposition of Native American cultural items from Federal or tribal land in a manner consistent with section 3(c) of the Native American Graves Protection and Repatriation Act (25 U.S.C. 3002(c)).

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, a historic property is to be substantially altered or demolished, timely steps are taken to make or have made appropriate records, and that such records then be deposited, in accordance with section 101(a), in the Library of Congress or with such other appropriate agency as may be designated by the Secretary, for future use and reference.

Designation of Federal agency preservation officers

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

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.

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.

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 maybe necessary to minimize harm to such landmark, and shall afford the Advisory Council on Historic Preservation a reasonable opportunity to comment on the undertaking.

Preservation activities as an eligible project

(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 cost by such agency. The eligible project cost 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.

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 achievement to officers and employees of Federal, State, and certified local governments in recognition of their outstanding contributions to the preservation of historic resources. Such program may include the issuance of annual awards by the president of the United States to any citizen of the United States recommended for such award by the Secretary.

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, and nothing in this Act shall be construed to provide any exemption from any requirement respecting the preparation of such a statement under such Act.

(j) The Secretary shall promulgate regulations under which the requirements of

this section may be waived in whole or in part in the event of a major natural disaster or an imminent threat to the national security.

No Federal agency shall give assistance to an applicant who intends to intentionally create an adverse effect

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

Agency heads responsible for section 106 compliance

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

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

Leases or exchanges of Federal historic properties

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

Use of proceeds

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

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

Professional standards

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

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

Personnel qualification standards

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

Data maintenance

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

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

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

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

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

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

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

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

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

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

Section 113

Interstate and international traffic in antiquities

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

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

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

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

TITLE II

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

Advisory Council on Historic Preservation membership

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

(1) a Chairman appointed by the President selected from the general public;

(2) the Secretary of the Interior;

(3) the Architect of the Capitol;

(4) the Secretary of Agriculture and the heads of four other agencies of the United States (other than the Department of the Interior), the activities of which affect historic preservation, 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.

Designees

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

Term of office

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

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 the enactment of the National Historic Preservation Act Amendments of 1980 shall remain in office until all members of the Council, as specified in this section, have been appointed. The members first appointed under this section shall be appointed not later than one hundred and eighty days after the enactment of the National Historic Preservation Act Amendments of 1980.

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.

Quorum

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

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

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.

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; and each

such department or instrumentality is authorized to furnish such information, suggestions, estimates, and statistics to the extent permitted by law and within available funds.

Section 204 (16 U.S.C. 4701)

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 performances of the duties of the Council. All members of the Council shall receive reimbursement for necessary traveling and subsistence expenses incurred by them in the performance of the duties of the Council.

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

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.

General Counsel and 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.

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.

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.

Consultants

(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.

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 maybe agreed upon the Chairman of the Council and the Secretary of the Interior; Provided, That the regulations of the Department of the Interior for the collection of indebtedness of personnel resulting from erroneous payments (5 U.S.C. 46(e)) shall apply to the collection of erroneous payments made to or on behalf of a Council employee, and regulations of said Secretary for the administrative control of funds (31 U.S.C. 665(g)) shall apply to appropriations of the Council: And provided further, That the Council shall not be required to prescribe such regulations.

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

International Centre for the Study of 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.

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.

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 funds

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

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

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 the Administrative Procedure Act (80 Stat. 381) shall govern the operations of the Council.

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

Submission to 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 which affect such local governments.

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

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 of the fiscal years 1997 through 2000.

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 Interior and 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)

Exemption 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 purposes of this Act, taking into consideration the magnitude of the exempted undertaking or program and the likelihood of impairment of historic properties.

TITLE III

Section 301 (16 U.S.C. 470w)

Definitions

As used in this Act, the term--

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

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

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

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

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

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

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

including--

- (A) those carried out by or on behalf of the agency;
- (B) those carried out with Federal financial assistance;
- (C) those requiring a Federal permit, license, or approval; and
- (D) those subject to State or local regulation administered pursuant to a delegation or approval by a Federal agency.

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

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

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

- (A) historic properties,
- (B) buildings having similar or related architectural characteristics,
- (C) cultural cohesiveness, or
- (D) any combination of the foregoing.

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

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

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

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

(C) which has the authority to--

- (i) review National Register nominations and appeals from nominations;
- (ii) review appropriate documentation submitted in conjunction with the Historic Preservation Fund;
- (iii) provide general advice and guidance to the State Historic Preservation Officer, and
- (iv) perform such other duties as may be appropriate.

(13) "Historic preservation review commission" means a board, council, commission, or other similar collegial body which is established by State or local legislation as provided in section 101(c)(1)(B), and the members of

which are appointed, unless otherwise provided by State or local legislation, by the chief elected official of the jurisdiction concerned from among--

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

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

(14) "Tribal lands" means--

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

(B) all dependent Indian communities.

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

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

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

(18) "Native Hawaiian organization" means any organization which--

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

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

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

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

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

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)

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.

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 US.C. 470w-3)

Confidentiality of the location of sensitive historic resources

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

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

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

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

Section 305 (16 US.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)

National Museum 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.

Cooperative agreement

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

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

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

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

Grants to Committee

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

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.

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.

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, archeology, construction, building technology and skills, landscape architecture, preservation and conservation, building and construction, engineering, urban and community design and renewal, city and regional planning, and related professions, skills, trades and crafts.

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

Transmittal of regulations to congressional committees

(a) Except as provided in subsection (b) of this section, no final regulation of the Secretary shall become effective prior to the expiration of thirty calendar days after it is published in the Federal Register during which either or both Houses of Congress are in session.

(b) REPEALED

Disapproval by Congress

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

Inaction by Congress

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

Definitions

(e) For the purposes of this section--

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

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

Effect of congressional inaction

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

TITLE IV

Section 401

Findings

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

Definitions

For the purposes of this title--

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

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

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

Section 403

Establishment of national center

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

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

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

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

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

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

(5) cooperate with related international organizations including, but not

limited to the International Council on Monuments and Sites, the International Center for the Study of Preservation and Restoration of Cultural Property, and the International Council on Museums.

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

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

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

Section 404

Preservation Technology and Training Board

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

(b) Duties. The Board shall--

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

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

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

(c) Membership. The Board shall be comprised of--

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

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

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

Section 405

Preservation grants

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

(b) Grant requirements.

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

(2) No grant recipient may receive more than 10 percent of the grants allocated under this section within any year.

(3) The total administrative costs, direct and indirect, charged for carrying out grants under this section may not exceed 25 percent of the aggregate costs.

(c) Eligible applicants. Eligible applicants may include Federal and non-Federal laboratories, accredited museums, universities, non-profit organizations; offices, units, and Cooperative Park Study Units of the National Park System, State Historic Preservation Offices, tribal preservation offices, and Native Hawaiian organizations.

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

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

Section 406

General provisions

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

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

(2) transfers of funds from other Federal agencies.

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

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

Section 407

National Park Service preservation centers

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

APPENDIX I

National Historic Preservation Act Amendments of 1980, Public Law 96-515,

December 12, 1980, 94 Stat. 3000

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

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

Costs for identification, surveys, evaluation, and data recovery with respect to historic properties

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

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

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

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

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

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.

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

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

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

Federal undertakings outside the United States; mitigation of adverse effects

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

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

Secretary's report to the President and Congress: folklife

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

Section 503 (16 U.S. C. 470j note)

Council's report to the President and Congress: tax laws

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

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

Secretary's report to the President and Congress: Historic Preservation Fund

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

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

Pennsylvania Avenue Development Corporation: development plan, review, report to congressional committees

The Pennsylvania Avenue Development Corporation shall review the development

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

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

Secretary's study and report to the President and Congress: cultural parks

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

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

Secretary's report to the President and Congress: fire in historic properties

The Secretary, in cooperation with the Secretary of the Treasury, the Administrator of the United States Fire Administration, and the Administrator of the Federal Insurance Administration, shall submit a report to the President and the Congress on fire in historic properties. Such report shall include a review of Federal laws to determine any relationship between these laws and arson or fire by "suspicious origin," and to make recommendations respecting amendments to such laws should a correlation be found to exist. Such report shall include the feasibility and necessity of establishing or developing protective measures at the Federal, State, or local level for the prevention, detection, and control of arson or fire by "suspicious origin" in historic properties. Such report shall also include recommendations regarding the Federal role in assisting the States and local governments with protecting historic properties from damage by fire. Such report shall be submitted within eighteen months after the date of enactment of this Act.

APPENDIX II

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

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

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

Recommendations

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

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

Requirement for specific authorization for projects

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

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

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

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

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

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

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

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

Report by Secretary of the Interior on eligibility for National Register

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

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

Appendix B

CODE OF FEDERAL REGULATIONS
TITLE 36--PARKS, FORESTS, AND PUBLIC PROPERTY
CHAPTER I--NATIONAL PARK SERVICE, DEPARTMENT OF THE INTERIOR
PART 60--NATIONAL REGISTER OF HISTORIC PLACES

s 60.1 Authorization and expansion of the National Register.

(a) The National Historic Preservation Act of 1966, 80 Stat. 915, 16 U.S.C. 470 et seq., as amended, authorizes the Secretary of the Interior to expand and maintain a National Register of districts, sites, buildings, structures, and objects significant in American history, architecture, archeology, engineering and culture. The regulations herein set forth the procedural requirements for listing properties on the National Register.

(b) Properties are added to the National Register through the following processes.

(1) Those Acts of Congress and Executive orders which create historic areas of the National Park System administered by the National Park Service, all or portions of which may be determined to be of historic significance consistent with the intent of Congress;

(2) Properties declared by the Secretary of the Interior to be of national significance and designated as National Historic Landmarks;

(3) Nominations prepared under approved State Historic Preservation Programs, submitted by the State Historic Preservation Officer and approved by the NPS;

(4) Nominations from any person or local government (only if such property is located in a State with no approved State Historic Preservation Program) approved by the NPS and;

(5) Nominations of Federal properties prepared by Federal agencies, submitted by the Federal Preservation Officer and approved by NPS.

s 60.2 Effects of listing under Federal law.

The National Register is an authoritative guide to be used by Federal, State, and local governments, private groups and citizens to identify the Nation's cultural resources and to indicate what properties should be considered for protection from destruction or impairment. Listing of private property on the National Register does not prohibit under Federal law or regulation any actions which may otherwise be taken by the property owner with respect to the property.

(a) The National Register was designed to be and is administered as a planning tool. Federal agencies undertaking a project having an effect on a listed or eligible property must provide the Advisory Council on Historic Preservation a reasonable opportunity to comment pursuant to section 106 of the National Historic Preservation Act of 1966, as amended. The Council has adopted procedures concerning, inter alia, their commenting responsibility in 36 CFR Part 800. Having complied with this procedural requirement the Federal agency may adopt any course of action it believes is appropriate. While the Advisory Council comments must be taken into account and integrated into the decision making process, program decisions rest with the agency implementing the undertaking.

(b) Listing in the National Register also makes property owners eligible to be considered for Federal grants-in-aid for historic preservation.

(c) If a property is listed in the National Register, certain provisions of the Tax Reform Act of 1976 as amended by the Revenue Act of 1978 and the Tax

Treatment Extension Act of 1980 may apply. These provisions encourage the preservation of depreciable historic structures by allowing favorable tax treatments for rehabilitation, and discourage destruction of historic buildings by eliminating certain otherwise available Federal tax provisions both for demolition of historic structures and for new construction on the site of demolished historic buildings. Owners of historic buildings may benefit from the investment tax credit provisions of the Revenue Act of 1978. The Economic Recovery Tax Act of 1981 generally replaces the rehabilitation tax incentives under these laws beginning January 1, 1982 with a 25% investment tax credit for rehabilitations of historic commercial, industrial and residential buildings. This can be combined with a 15-year cost recovery period for the adjusted basis of the historic building. Historic buildings with certified rehabilitations receive additional tax savings by their exemption from any requirement to reduce the basis of the building by the amount of the credit. The denial of accelerated depreciation for a building built on the site of a demolished historic building is repealed effective January 1, 1982. The Tax Treatment Extension Act of 1980 includes provisions regarding charitable contributions for conservation purposes of partial interests in historically important land areas or structures.

(d) If a property contains surface coal resources and is listed in the National Register, certain provisions of the Surface Mining and Control Act of 1977 require consideration of a property's historic values in the determination on issuance of a surface coal mining permit.

s 60.3 Definitions.

(a) Building. A building is a structure created to shelter any form of human activity, such as a house, barn, church, hotel, or similar structure. Building may refer to a historically related complex such as a courthouse and jail or a house and barn.

Examples

Molly Brown House (Denver, CO)
Meek Mansion and Carriage House (Hayward, CA)
Huron County Courthouse and Jail (Norwalk, OH)
Fairtosh Plantation (Durham vicinity, NC)

(b) Chief elected local official. Chief elected local official means the mayor, county judge, county executive or otherwise titled chief elected administrative official who is the elected head of the local political jurisdiction in which the property is located.

(c) Determination of eligibility. A determination of eligibility is a decision by the Department of the Interior that a district, site, building, structure or object meets the National Register criteria for evaluation although the property is not formally listed in the National Register. A determination of eligibility does not make the property eligible for such benefits as grants, loans, or tax incentives that have listing on the National Register as a prerequisite.

(d) District. A district is a geographically definable area, urban or rural, possessing a significant concentration, linkage, or continuity of sites, buildings, structures, or objects united by past events or aesthetically by plan or physical development. A district may also comprise individual elements separated geographically but linked by association or history.

Examples

Georgetown Historic District (Washington, DC)
Martin Luther King Historic District (Atlanta, GA)
Durango-Silverton Narrow-Gauge Railroad (right-of-way between Durango and

Silverton, CO)

(e) Federal Preservation Officer. The Federal Preservation Officer is the official designated by the head of each Federal agency responsible for coordinating that agency's activities under the National Historic Preservation Act of 1966, as amended, and Executive Order 11593 including nominating properties under that agency's ownership or control to the National Register.

(f) Keeper of the National Register of Historic Places. The Keeper is the individual who has been delegated the authority by NPS to list properties and determine their eligibility for the National Register. The Keeper may further delegate this authority as he or she deems appropriate.

(g) Multiple Resource Format submission. A Multiple Resource Format submission for nominating properties to the National Register is one which includes all or a defined portion of the cultural resources identified in a specified geographical area.

(h) National Park Service (NPS). The National Park Service is the bureau of the Department of Interior to which the Secretary of Interior has delegated the authority and responsibility for administering the National Register program.

(i) National Register Nomination Form. National Register Nomination Form means (1) National Register Nomination Form NPS 10-900, with accompanying continuation sheets (where necessary) Form NPS 10-900a, maps and photographs or (2) for Federal nominations, Form No. 10-306, with continuation sheets (where necessary) Form No. 10-300A, maps and photographs. Such nomination forms must be "adequately documented" and "technically and professionally correct and sufficient." To meet these requirements the forms and accompanying maps and photographs must be completed in accord with requirements and guidance in the NPS publication, "How to Complete National Register Forms" and other NPS technical publications on this subject. Descriptions and statements of significance must be prepared in accord with standards generally accepted by academic historians, architectural historians and archeologists. The nomination form is a legal document and reference for historical, architectural, and archeological data upon which the protections for listed and eligible properties are founded. The nominating authority certifies that the nomination is adequately documented and technically and professionally correct and sufficient upon nomination.

(j) Object. An object is a 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.

Examples

Delta Queen Steamboat (Cincinnati, OH)
Adams Memorial (Rock Creek Cemetery, Washington, DC)
Sumpter Valley Gold Dredge (Sumpter, OR)

(k) Owner or owners. The term owner or owners means those individuals, partnerships, corporations or public agencies holding fee simple title to property. Owner or owners does not include individuals, partnerships, corporations or public agencies holding easements or less than fee interests (including leaseholds) of any nature.

(l) Site. A site is the location of a significant event, a prehistoric or historic occupation or activity, or a building or structure, whether standing, ruined, or vanished, where the location itself maintains historical or archeological value regardless of the value of any existing structure.

Examples

Cabin Creek Battlefield (Pensacola vicinity, OK)
Mound Cemetery Mound (Chester vicinity, OH)
Mud Springs Pony Express Station Site (Dalton vicinity, NE)

(m) State Historic Preservation Officer. The State Historic Preservation Officer is the person who has been designated by the Governor or chief executive or by State statute in each State to administer the State Historic Preservation Program, including identifying and nominating eligible properties to the National Register and otherwise administering applications for listing historic properties in the National Register.

(n) State Historic Preservation Program. The State Historic Preservation Program is the program established by each State and approved by the Secretary of Interior for the purpose of carrying out the provisions of the National Historic Preservation Act of 1966, as amended, and related laws and regulations. Such program shall be approved by the Secretary before the State may nominate properties to the National Register. Any State Historic Preservation Program in effect under prior authority of law before December 12, 1980, shall be treated as an approved program until the Secretary approves a program submitted by the State for purposes of the Amendments or December 12, 1983, unless the Secretary chooses to rescind such approval because of program deficiencies.

(o) State Review Board. The State Review Board is a body whose members represent the professional fields of American history, architectural history, historic architecture, prehistoric and historic archeology, and other professional disciplines and may include citizen members. In States with approved State historic preservation programs the State Review Board reviews and approves National Register nominations concerning whether or not they meet the criteria for evaluation prior to their submittal to the NPS.

(p) Structure. A structure is a work made up of interdependent and interrelated parts in a definite pattern of organization. Constructed by man, it is often an engineering project large in scale.

Examples

Swanton Covered Railroad Bridge (Swanton vicinity, VT)
Old Point Loma Lighthouse (San Diego, CA)
North Point Water Tower (Milwaukee, WI)
Reber Radio Telescope (Green Bay vicinity, WI)

(q) Thematic Group Format submission. A Thematic Group Format submission for nominating properties to the National Register is one which includes a finite group of resources related to one another in a clearly distinguishable way. They may be related to a single historic person, event, or developmental force; of one building type or use, or designed by a single architect; of a single archeological site form, or related to a particular set of archeological research problems.

(r) To nominate. To nominate is to propose that a district, site, building, structure, or object be listed in the National Register of Historic Places by preparing a nomination form, with accompanying maps and photographs which adequately document the property and are technically and professionally correct and sufficient.

s 60.4 Criteria for evaluation.

The criteria applied to evaluate properties (other than areas of the National Park System and National Historic Landmarks) for the National Register are listed below. These criteria are worded in a manner to provide for a wide

diversity of resources. The following criteria shall be used in evaluating properties for nomination to the National Register, by NPS in reviewing nominations, and for evaluating National Register eligibility of properties. Guidance in applying the criteria is further discussed in the "How To" publications, Standards & Guidelines sheets and Keeper's opinions of the National Register. Such materials as available upon request. National Register criteria for evaluation. The quality of significance in American history, architecture, archeology, engineering, and culture is present in districts, sites, buildings, structures, and objects that possess integrity of location, design, setting, materials, workmanship, feeling, and association and

- (a) that are associated with events that have made a significant contribution to the broad patterns of our history; or
- (b) that are associated with the lives of persons significant in our past; or
- (c) that embody the distinctive characteristics of a type, period, or method of construction, or that represent the work of a master, or that possess high artistic values, or that represent a significant and distinguishable entity whose components may lack individual distinction; or
- (d) that have yielded, or may be likely to yield, information important in prehistory or history.

Criteria considerations. Ordinarily cemeteries, birthplaces, or graves of historical figures, properties owned by religious institutions or used for religious purposes, structures that have been moved from their original locations, reconstructed historic buildings, properties primarily commemorative in nature, and properties that have achieved significance within the past 50 years shall not be considered eligible for the National Register. However, such properties will qualify if they are integral parts of districts that do meet the criteria of if they fall within the following categories:

- (a) A religious property deriving primary significance from architectural or artistic distinction or historical importance; or
- (b) A building or structure removed from its original location but which is significant primarily for architectural value, or which is the surviving structure most importantly associated with a historic person or event; or
- (c) A birthplace or grave of a historical figure of outstanding importance if there is no appropriate site or building directly associated with his productive life.
- (d) A cemetery which derives its primary significance from graves of persons of transcendent importance, from age, from distinctive design features, or from association with historic events; or
- (e) A reconstructed building when accurately executed in a suitable environment and presented in a dignified manner as part of a restoration master plan, and when no other building or structure with the same association has survived; or
- (f) A property primarily commemorative in intent if design, age, tradition, or symbolic value has invested it with its own exceptional significance; or
- (g) A property achieving significance within the past 50 years if it is of exceptional importance. This exception is described further in NPS "How To" #2, entitled "How to Evaluate and Nominate Potential National Register Properties That Have Achieved Significance Within the Last 50 Years" which is available from the National Register of Historic Places Division, National Park Service, United States Department of the Interior, Washington, D.C. 20240.

s 60.5 Nomination forms and information collection.

(a) All nominations to the National Register are to be made on standard National Register forms. These forms are provided upon request to the State Historic Preservation Officer, participating Federal agencies and others by the NPS. For archival reasons, no other forms, photocopied or otherwise, will be accepted.

(b) The information collection requirements contained in this part have been approved by the Office of Management and Budget under 44 U.S.C. 3507 and assigned clearance number 1024-0018. The information is being collected as part of the nomination of properties to the National Register. This information will be used to evaluate the eligibility of properties for inclusion in the National Register under established criteria. The obligation to respond is required to obtain a benefit.

s 60.6 Nominations by the State Historic Preservation Officer under approved State Historic Preservation programs.

(a) The State Historic Preservation Officer is responsible for identifying and nominating eligible properties to the National Register. Nomination forms are prepared under the supervision of the State Historic Preservation Officer. The State Historic Preservation Officer establishes statewide priorities for preparation and submittal of nominations for all properties meeting National Register criteria for evaluation within the State. All nominations from the State shall be submitted in accord with the State priorities, which shall be consistent with an approved State historic preservation plan.

(b) The State shall consult with local authorities in the nomination process. The State provides notice of the intent to nominate a property and solicits written comments especially on the significance of the property and whether or not it meets the National Register criteria for evaluation. The State notice also gives owners of private property an opportunity to concur in or object to listing. The notice is carried out as specified in the subsections below.

(c) As part of the nomination process, each State is required to notify in writing the property owner(s), except as specified in paragraph (d) of this section, of the State's intent to bring the nomination before the State Review Board. The list of owners shall be obtained from either official land recordation records or tax records, whichever is more appropriate, within 90 days prior to the notification of intent to nominate. If in any State the land recordation or tax records is not the most appropriate list from which to obtain owners that State shall notify the Keeper in writing and request approval that an alternative source of owners may be used.

The State is responsible for notifying only those owners whose names appear on the list consulted. Where there is more than one owner on the list, each separate owner shall be notified. The State shall send the written notification at least 30 but not more than 75 days before the State Review Board meeting. Required notices may vary in some details of wording as the States prefer, but the content of notices must be approved by the National Register. The notice shall give the owner(s) at least 30 but not more than 75 days to submit written comments and concur in or object in writing to the nomination of such property. At least 30 but not more than 75 days before the State Review Board meeting, the States are also required to notify by the above mentioned National Register approved notice the applicable chief elected official of the county (or equivalent governmental unit) and municipal political jurisdiction in which the property is located. The National Register nomination shall be on file with the State Historic Preservation Program during the comment period and a copy made available by mail when requested by the public, or made available at a location of reasonable access to all affected property owners, such as a local library courthouse, or other

public place, prior to the State Review Board meeting so that written comments regarding the nomination can be prepared.

(d) For a nomination with more than 50 property owners, each State is required to notify in writing at least 30 but not more than 75 days in advance of the State Review Board meeting the chief elected local officials of the county (or equivalent governmental unit) and municipal political jurisdiction in which the property or district is located. The State shall provide general notice to property owners concerning the State's intent to nominate. The general notice shall be published at least 30 days but not more than 75 days before the State Review Board meeting and provide an opportunity for the submission of written comments and provide the owners of private property or a majority of such owners for districts an opportunity to concur in or object in writing to the nomination. Such general notice must be published in one or more local newspapers of general circulation in the area of the nomination. The content of the notices shall be approved by the National Register. If such general notice is used to notify the property owners for a nomination containing more than 50 owners, it is suggested that a public information meeting be held in the immediate area prior to the State Review Board meeting. If the State wishes to individually notify all property owners, it may do so, pursuant to procedures specified in Subsection 60.6(c), in which case, the State need not publish a general notice.

(e) For Multiple Resource and Thematic Group Format submission, each district, site, building, structure and object included in the submission is treated as a separate nomination for the purpose of notification and to provide owners of private property the opportunity to concur in or object in writing to the nomination in accord with this section.

(f) The commenting period following notifications can be waived only when all property owners and the chief elected local official have advised the State in writing that they agree to the waiver.

(g) Upon notification, any owner or owners of a private property who wish to object shall submit to the State Historic Preservation Officer a notarized statement certifying that the party is the sole or partial owner of the private property, as appropriate, and objects to the listing. In nominations with multiple ownership of a single private property or of districts, the property will not be listed if a majority of the owners object to listing. Upon receipt of notarized objections respecting a district or single private property with multiple owners, it is the responsibility of the State Historic Preservation Officer to ascertain whether a majority of owners of private

property have objected. If an owner whose name did not appear on the list certifies in a written notarized statement that the party is the sole or partial owner of a nominated private property such owner shall be counted by the State Historic Preservation Officer in determining whether a majority of owners has objected. Each owner of private property in a district has one vote regardless of how many properties or what part of one property that party owns and regardless of whether the property contributes to the significance of the district.

(h) If a property has been submitted to and approved by the State Review Board for inclusion in the National Register prior to the effective date of this section, the State Historic Preservation Officer need not resubmit the property to the State Review Board; but before submitting the nomination to the NPS shall afford owners of private property the opportunity to concur in or object to the property's inclusion in the Register pursuant to applicable notification procedures described above.

(i) [Reserved]

(j) Completed nomination forms or the documentation proposed for submission on the nomination forms and comments concerning the significance of a property and its eligibility for the National Register are submitted to the State Review Board. The State Review Board shall review the nomination forms or documentation proposed for submission on the nomination forms and any comments concerning the property's significance and eligibility for the National Register. The State Review Board shall determine whether or not the property meets the National Register criteria for evaluation and make a recommendation to the State Historic Preservation Officer to approve or disapprove the nomination.

(k) Nominations approved by the State Review Board and comments received are then reviewed by the State Historic Preservation Officer and if he or she finds the nominations to be adequately documented and technically, professionally, and procedurally correct and sufficient and in conformance with National Register criteria for evaluation, the nominations are submitted to the Keeper of the National Register of Historic Places, National Park Service, United States Department of the Interior, Washington, D.C. 20240. All comments received by a State and notarized statements of objection to listing are submitted with a nomination.

(l) If the State Historic Preservation Officer and the State Review Board disagree on whether a property meets the National Register criteria for evaluation, the State Historic Preservation Officer, if he or she chooses, may submit the nomination with his or her opinion concerning whether or not the property meets the criteria for evaluation and the opinion of the State Review Board to the Keeper of the National Register for a final decision on the listing of the property. The opinion of the State Review Board may be the minutes of the Review Board meeting. The State Historic Preservation Officer shall submit such disputed nominations if so requested within 45 days of the State Review Board meeting by the State Review Board or the chief elected local official of the local, county or municipal political subdivision in which the property is located but need not otherwise do so. Such nominations will be substantively reviewed by the Keeper.

(m) The State Historic Preservation Officer shall also submit to the Keeper nominations if so requested under the appeals process in s 60.12.

(n) If the owner of a private property or the majority of such owners for a district or single property with multiple owners have objected to the nomination prior to the submittal of a nomination, the State Historic Preservation Officer shall submit the nomination to the Keeper only for a determination of eligibility pursuant to subsection (s) of this section.

(o) The State Historic Preservation Officer signs block 12 of the nomination form if in his or her opinion the property meets the National Register criteria for evaluation. The State Historic Preservation Officer's signature in block 12 certifies that:

(1) All procedural requirements have been met;

(2) The nomination form is adequately documented;

(3) The nomination form is technically and professionally correct and sufficient;

(4) In the opinion of the State Historic Preservation Officer, the property meets the National Register criteria for evaluation.

(p) When a State Historic Preservation Officer submits a nomination form for a property that he or she does not believe meets the National Register criteria for evaluation, the State Historic Preservation Officer signs a continuation sheet Form NPS 10-900a explaining his/her opinions on the eligibility of the

property and certifying that:

- (1) All procedural requirements have been met;
 - (2) The nomination form is adequately documented;
 - (3) The nomination form is technically and professionally correct and sufficient.
- (q) Notice will be provided in the FEDERAL REGISTER that the nominated property is being considered for listing in the National Register of Historic Places as specified in s 60.13.
- (r) Nominations will be included in the National Register within 45 days of receipt by the Keeper or designee unless the Keeper disapproves a nomination, an appeal is filed, or the owner of private property (or the majority of such owners for a district or single property with multiple owners) objects by notarized statements received by the Keeper prior to listing. Nominations which are technically or professionally inadequate will be returned for correction and resubmission. When a property does not appear to meet the National Register criteria for evaluation, the nomination will be returned with an explanation as to why the property does not meet the National Register criteria for evaluation.
- (s) If the owner of private property (or the majority of such owners for a district or single property with multiple owners) has objected to the nomination by notarized statement prior to listing, the Keeper shall review the nomination and make a determination of eligibility within 45 days of receipt, unless an appeal is filed. The Keeper shall list such properties determined eligible in the National Register upon receipt of notarized statements from the owner(s) of private property that the owner(s) no longer object to listing.
- (t) Any person or organization which supports or opposes the nomination of a property by a State Historic Preservation Officer may petition the Keeper during the nomination process either to accept or reject a nomination. The petitioner must state the grounds of the petition and request in writing that the Keeper substantively review the nomination. Such petitions received by the Keeper prior to the listing of a property in the National Register or a determination of its eligibility where the private owners object to listing will be considered by the Keeper and the nomination will be substantively reviewed.
- (u) State Historic Preservation Officers are required to inform the property owners and the chief elected local official when properties are listed in the National Register. In the case of a nomination where there are more than 50 property owners, they may be notified of the entry in the National Register by the same general notice stated in s 60.6(d). States which notify all property owners individually of entries in the National Register need not publish a general notice.
- (v) In the case of nominations where the owner of private property (or the majority of such owners for a district or single property with multiple owners) has objected and the Keeper has determined the nomination eligible for the National Register, the State Historic Preservation Officer shall notify the appropriate chief elected local official and the owner(s) of such property of this determination. The general notice may be used for properties with more than 50 owners as described in s 60.6(d) or the State Historic Preservation Officer may notify the owners individually.
- (w) If subsequent to nomination a State makes major revisions to a nomination or renominates a property rejected by the Keeper, the State Historic Preservation Officer shall notify the affected property owner(s) and the chief

elected local official of the revisions or renomination in the same manner as the original notification for the nomination, but need not resubmit the nomination to the State Review Board. Comments received and notarized statements of objection must be forwarded to the Keeper along with the revisions or renomination. The State Historic Preservation Officer also certifies by the resubmittal that the affected property owner(s) and the chief elected local official have been renotified. "Major revisions" as used herein means revisions of boundaries or important substantive revisions to the nomination which could be expected to change the ultimate outcome as to whether or not the property is listed in the National Register by the Keeper.

(x) Notwithstanding any provision hereof to the contrary, the State Historic Preservation Officer in the nomination notification process or otherwise need not make available to any person or entity (except a Federal agency planning a project, the property owner, the chief elected local official of the political jurisdiction in which the property is located, and the local historic preservation commission for certified local governments) specific information relating to the location of properties proposed to be nominated to, or listed in, the National Register if he or she determines that the disclosure of specific information would create a risk of destruction or harm to such properties.

(y) With regard to property under Federal ownership or control, completed nomination forms shall be submitted to the Federal Preservation Officer for review and comment. The Federal Preservation Officer, may approve the nomination and forward it to the Keeper of the National Register of Historic Places, National Park Service, United States Department of the Interior, Washington, D.C. 20240.

ss 60.7 to 60.8 [Reserved]

s 60.9 Nominations by Federal agencies.

(a) The National Historic Preservation Act of 1966, as amended, requires that, with the advice of the Secretary and in cooperation with the State Historic Preservation Officer of the State involved, each Federal agency shall establish a program to locate, inventory and nominate to the Secretary all properties under the agency's ownership or control that appear to qualify for inclusion on the National Register. Section 2(a) of Executive Order 11593 provides that Federal agencies shall 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. Additional responsibilities of Federal agencies are detailed in the National Historic Preservation Act of 1966, as amended, Executive Order 11593, the National Environmental Policy Act of 1969, the Archeological and Historic Preservation Act of 1974, and procedures developed pursuant to these authorities, and other related legislation.

(b) Nomination forms are prepared under the supervision of the Federal Preservation Officer designated by the head of a Federal agency to fulfill agency responsibilities under the National Historic Preservation Act of 1966, as amended.

(c) Completed nominations are submitted to the appropriate State Historic Preservation Officer for review and comment regarding the adequacy of the nomination, the significance of the property and its eligibility for the National Register. The chief elected local officials of the county (or equivalent governmental unit) and municipal political jurisdiction in which the property is located are notified and given 45 days in which to comment. The State Historic Preservation Officer signs block 12 of the nomination form with his/her recommendation.

(d) After receiving the comments of the State Historic Preservation Officer, and chief elected local official, or if there has been no response within 45

days, the Federal Preservation Officer may approve the nomination and forward it to the Keeper of the National Register of Historic Places, National Park Service, United States Department of the Interior, Washington, D.C. 20240. The Federal Preservation Officer signs block 12 of the nomination form if in his or her opinion the property meets the National Register criteria for evaluation. The Federal Preservation Officer's signature in block 12 certifies that:

- (1) All procedural requirements have been met;
- (2) The nomination form is adequately documented;
- (3) The nomination form is technically and professionally correct and sufficient;
- (4) In the opinion of the Federal Preservation Officer, the property meets the National Register criteria for evaluation.

(e) When a Federal Preservation Officer submits a nomination form for a property that he or she does not believe meets the National Register criteria for evaluation, the Federal Preservation Officer signs a continuation sheet Form NPS 10-900a explaining his/her opinions on the eligibility of the property and certifying that:

- (1) All procedural requirements have been met;
- (2) The nomination form is adequately documented;
- (3) The nomination form is technically and professionally correct and sufficient.

(f) The comments of the State Historic Preservation Officer and chief local official are appended to the nomination, or, if there are no comments from the State Historic Preservation Officer an explanation is attached. Concurrent nominations (see s 60.10) cannot be submitted, however, until the nomination has been considered by the State in accord with Sec. 60.6, supra. Comments received by the State concerning concurrent nominations and notarized statements of objection must be submitted with the nomination.

(g) Notice will be provided in the FEDERAL REGISTER that the nominated property is being considered for listing in the National Register of Historic Places in accord with s 60.13.

(h) Nominations will be included in the National Register within 45 days of receipt by the Keeper or designee unless the Keeper disapproves such nomination or an appeal is filed. Nominations which are technically or professionally inadequate will be returned for correction and resubmission. When a property does not appear to meet the National Register criteria for evaluation, the nomination will be returned with an explanation as to why the property does not meet the National Register criteria for evaluation.

(i) Any person or organization which supports or opposes the nomination of a property by a Federal Preservation Officer may petition the Keeper during the nomination process either to accept or reject a nomination. The petitioner must state the grounds of the petition and request in writing that the Keeper substantively review the nomination. Such petition received by the Keeper prior to the listing of a property in the National Register or a determination of its eligibility where the private owner(s) object to listing will be considered by the Keeper and the nomination will be substantively reviewed.

s 60.10 Concurrent State and Federal nominations.

- (a) State Historic Preservation Officers and Federal Preservation Officers are

encouraged to cooperate in locating, inventorying, evaluating, and nominating all properties possessing historical, architectural, archeological, or cultural value. Federal agencies may nominate properties where a portion of the property is not under Federal ownership or control.

(b) When a portion of the area included in a Federal nomination is not located on land under the ownership or control of the Federal agency, but is an integral part of the cultural resource, the completed nomination form shall be sent to the State Historic Preservation Officer for notification to property owners, to give owners of private property an opportunity to concur in or object to the nomination, to solicit written comments and for submission to the State Review Board pursuant to the procedures in s 60.6.

(c) If the State Historic Preservation Officer and the State Review Board agree that the nomination meets the National Register criteria for evaluation, the nomination is signed by the State Historic Preservation Officer and returned to the Federal agency initiating the nomination. If the State Historic Preservation Officer and the State Review Board disagree, the nomination shall be returned to the Federal agency with the opinions of the State Historic Preservation Officer and the State Review Board concerning the adequacy of the nomination and whether or not the property meets the criteria for evaluation. The opinion of the State Review Board may be the minutes of the State Review Board meeting. The State Historic Preservation Officer's signed opinion and comments shall confirm to the Federal agency that the State nomination procedures have been fulfilled including notification requirements. Any comments received by the State shall be included with the letter as shall any notarized statements objecting to the listing of private property.

(d) If the owner of any privately owned property, (or a majority of the owners of such properties within a district or single property with multiple owners) objects to such inclusion by notarized statement(s) the Federal Historic Preservation Officer shall submit the nomination to the Keeper for review and a determination of eligibility, Comments, opinions, and notarized statements of objection shall be submitted with the nomination.

(e) The State Historic Preservation Officer shall notify the nonfederal owners when a concurrent nomination is listed or determination eligible for the National Register as required in s 60.6.

s 60.11 Requests for nominations.

(a) The State Historic Preservation Officer or Federal Preservation Officer as appropriate shall respond in writing within 60 days to any person or organization submitting a completed National Register nomination form or requesting consideration for any previously prepared nomination form on record with the State or Federal agency. The response shall provide a technical opinion concerning whether or not the property is adequately documented and appears to meet the National Register criteria for evaluation in s 60.4. If the nomination form is determined to be inadequately documented, the nominating authority shall provide the applicant with an explanation of the reasons for that determination.

(b) If the nomination form does not appear to be adequately documented, upon receiving notification, it shall be the responsibility of the applicant to provide necessary additional documentation.

(c) If the nomination form appears to be adequately documented and if the property appears to meet the National Register criteria for evaluation, the State Historic Preservation Officer shall comply with the notification requirements in Section 60.6 and schedule the property for presentation at the earliest possible State Review Board meeting. Scheduling shall be consistent with the State's established priorities for processing nominations. If the nomination form is adequately documented, but the property does not appear to

meet National Register criteria for evaluation, the State Historic Preservation Officer need not process the nomination, unless so requested by the Keeper pursuant to s 60.12.

(d) The State Historic Preservation Officer's response shall advise the applicant of the property's position in accord with the State's priorities for processing nominations and of the approximate date the applicant can expect its consideration by the State Review Board. The State Historic Preservation Officer shall also provide notice to the applicant of the time and place of the Review Board meeting at least 30 but not more than 75 days before the meeting, as well as complying with the notification requirements in s 60.6.

(e) Upon action on a nomination by the State Review Board, the State Historic Preservation Officer shall, within 90 days, submit the nomination to the National Park Service, or, if the State Historic Preservation Officer does not consider the property eligible for the National Register, so advise the applicant within 45 days.

(f) If the applicant substantially revises a nomination form as a result of comments by the State or Federal agency, it may be treated by the State Historic Preservation Officer or Federal Preservation Officer as a new submittal and reprocessed in accord with the requirements in this section.

(g) The Federal Preservation Officer shall request the comments of the State Historic Preservation Officer and notify the applicant in writing within 90 days of receipt of an adequately documented nomination form as to whether the Federal agency will nominate the property. The Federal Preservation Officer shall submit an adequately documented nomination to the National Park Service unless in his or her opinion the property is not eligible for the National Register.

s 60.12 Nomination appeals.

(a) Any person or local government may appeal to the Keeper the failure or refusal of a nominating authority to nominate a property that the person or local government considers to meet the National Register criteria for evaluation upon decision of a nominating authority to not nominate a property for any reason when requested pursuant to s 60.11, or upon failure of a State Historic Preservation Officer to nominate a property recommended by the State Review Board. (This action differs from the procedure for appeals during the review of a nomination by the National Park Service where an individual or organization may "petition the Keeper during the nomination process," as specified in ss 60.6(t) and 60.9(i). Upon receipt of such petition the normal 45-day review period will be extended for 30 days beyond the date of the petition to allow the petitioner to provide additional documentation for review.)

(b) Such appeal shall include a copy of the nomination form and documentation previously submitted to the State Historic Preservation Officer or Federal Preservation Officer, an explanation of why the applicant is submitting the appeal in accord with this section and shall include pertinent correspondence from the State Historic Preservation Officer or Federal Preservation Officer.

(c) The Keeper will respond to the appellant and the State Historic Preservation Officer or Federal Preservation Officer with a written explanation either denying or sustaining the appeal within 45 days of receipt. If the appeal is sustained, the Keeper will:

(1) Request the State Historic Preservation Officer or Federal Preservation Officer to submit the nomination to the Keeper within 15 days if the nomination has completed the procedural requirements for nomination as described in Section 60.6 or 60.9 except that concurrence of the State Review Board, State Historic Preservation Officer or Federal Preservation Officer is

not required; or

(2) If the nomination has not completed these procedural requirements, request the State Historic Preservation Officer or Federal Preservation Officer to promptly process the nomination pursuant to Section 60.6 or 60.9 and submit the nomination to the Keeper without delay.

(d) State Historic Preservation Officers and Federal Preservation Officers shall process and submit such nominations if so requested by the Keeper pursuant to this section. The Secretary reserves the right to list properties in the National Register or determine properties eligible for such listing on his own motion when necessary to assist in the preservation of historic resources and after notifying the owner and appropriate parties and allowing for a 30-day comment period.

(e) No person shall be considered to have exhausted administrative remedies with respect to failure to nominate a property to the National Register until he or she has complied with procedures set forth in this section. The decision of the Keeper is the final administrative action on such appeals.

s 60.13 Publication in the "Federal Register" and other NPS notification.

(a) When a nomination is received, NPS will publish notice in the FEDERAL REGISTER that the property is being considered for listing in the National Register. A 15-day commenting period from date of publication will be provided. When necessary to assist in the preservation of historic properties this 15-day period may be shortened or waived.

(b) NPS shall notify the appropriate State Historic Preservation Officer, Federal Preservation Officer, person or local government when there is no approved State program of the listing of the property in the National Register and will publish notice of the listing in the FEDERAL REGISTER.

(c) In nominations where the owner of any privately owned property (or a majority of the owners of such properties within a district or single property with multiple owners) has objected and the Keeper has determined the nomination eligible for the National Register, NPS shall notify the State Historic Preservation Officer, the Federal Preservation Officer (for Federal or concurrent nominations), the person or local government where there is no approved State Historic Preservation Program and the Advisory Council on Historic Preservation. NPS will publish notice of the determination of eligibility in the FEDERAL REGISTER.

s 60.14 Changes and revisions to properties listed in the National Register.

(a) Boundary changes.

(1) A boundary alteration shall be considered as a new property nomination. All forms, criteria and procedures used in nominating a property to the National Register must be used. In the case of boundary enlargements only those owners in the newly nominated as yet unlisted area need be notified and will be counted in determining whether a majority of private owners object to listing. In the case of a diminution of a boundary, owners shall be notified as specified in s 60.15 concerning removing properties from the National Register. A professionally justified recommendation by the State Historic Preservation Officer, Federal Preservation Officer, or person or local government where there is no approved State Historic Preservation Program shall be presented to NPS. During this process, the property is not taken off the National Register. If the Keeper or his or her designee finds the recommendation in accordance with the National Register criteria for evaluation, the change will be accepted. If the boundary change is not accepted, the old boundaries will remain. Boundary revisions may be appealed as provided for in ss 60.12 and 60.15.

(2) Four justifications exist for altering a boundary: Professional error in the initial nomination, loss of historic integrity, recognition of additional significance, additional research documenting that a larger or smaller area should be listed. No enlargement of a boundary should be recommended unless the additional area possesses previously unrecognized significance in American history, architecture, archeology, engineering or culture. No diminution of a boundary should be recommended unless the properties being removed do not meet the National Register criteria for evaluation. Any proposal to alter a boundary has to be documented in detail including photographing the historic resources falling between the existing boundary and the other proposed boundary.

(b) Relocating properties listed in the National Register.

(1) Properties listed in the National Register should be moved only when there is no feasible alternative for preservation. When a property is moved, every effort should be made to reestablish its historic orientation, immediate setting, and general environment.

(2) If it is proposed that a property listed in the National Register be moved and the State Historic Preservation Officer, Federal agency for a property under Federal ownership or control, or person or local government where there is no approved State Historic Preservation Program, wishes the property to remain in the National Register during and after the move, the State Historic Preservation Officer or Federal Preservation Officer having ownership or control or person or local government where there is no approved State Historic Preservation Program, shall submit documentation to NPS prior to the move. The documentation shall discuss:

- (i) The reasons for the move;
- (ii) The effect on the property's historical integrity;
- (iii) The new setting and general environment of the proposed site, including evidence that the proposed site does not possess historical or archeological significance that would be adversely affected by the intrusion of the property; and
- (iv) Photographs showing the proposed location.

(3) Any such proposal with respect to the new location shall follow the required notification procedures, shall be approved by the State Review Board if it is a State nomination and shall continue to follow normal review procedures. The Keeper shall also follow the required notification procedures for nominations. The Keeper shall respond to a properly documented request within 45 days of receipt from the State Historic Preservation Officer or Federal Preservation Officer, or within 90 days of receipt from a person or local government where there is no approved State Historic Preservation Program, concerning whether or not the move is approved. Once the property is moved, the State Historic Preservation Officer, Federal Preservation Officer, or person or local government where there is no approved State Historic Preservation Program shall submit to the Keeper for review:

- (i) A letter notifying him or her of the date the property was moved;
- (ii) Photographs of the property on its new site; and
- (iii) Revised maps, including a U.S.G.S. map,
- (iv) Acreage, and

(v) Verbal boundary description.

The Keeper shall respond to a properly documented submittal within 45 days of receipt with the final decision on whether the property will remain in the National Register. If the Keeper approves the move, the property will remain in the National Register during and after the move unless the integrity of the property is in some unforeseen manner destroyed. If the Keeper does not approve the move, the property will be automatically deleted from the National Register when moved. In cases of properties removed from the National Register, if the State, Federal agency, or person or local government where there is no approved State Historic Preservation Program has neglected to obtain prior approval for the move or has evidence that previously unrecognized significance exists, or has accrued, the State, Federal agency, person or local government may resubmit a nomination for the property.

(4) In the event that a property is moved, deletion from the National Register will be automatic unless the above procedures are followed prior to the move. If the property has already been moved, it is the responsibility of the State, Federal agency or person or local government which nominated the property to notify the National Park Service. Assuming that the State, Federal agency or person or local government wishes to have the structure reentered in the National Register, it must be nominated again on new forms which should discuss:

(i) The reasons for the move;

(ii) The effect on the property's historical integrity, and

(iii) The new setting and general environment, including evidence that the new site does not possess historical or archeological significance that would be adversely affected by intrusion of the property.

In addition, new photographs, acreage, verbal boundary description and a U.S.G.S. map showing the structure at its new location must be sent along with the revised nomination. Any such nomination submitted by a State must be approved by the State Review Board.

(5) Properties moved in a manner consistent with the comments of the Advisory Council on Historic Preservation, in accord with its procedures (36 CFR Part 800), are granted as exception to s 60.12(b). Moving of properties in accord with the Advisory Council's procedures should be dealt with individually in each memorandum of agreement. In such cases, the State Historic Preservation Officer or the Federal Preservation Officer, for properties under Federal ownership or control, shall notify the Keeper of the new location after the move including new documentation as described above.

s 60.15 Removing properties from the National Register.

(a) Grounds for removing properties from the National Register are as follows:

(1) The property has ceased to meet the criteria for listing in the National Register because the qualities which caused it to be originally listed have been lost or destroyed, or such qualities were lost subsequent to nomination and prior to listing;

(2) Additional information shows that the property does not meet the National Register criteria for evaluation;

(3) Error in professional judgment as to whether the property meets the criteria for evaluation; or

(4) Prejudicial procedural error in the nomination or listing process. Properties removed from the National Register for procedural error shall be

reconsidered for listing by the Keeper after correction of the error or errors by the State Historic Preservation Officer, Federal Preservation Officer, person or local government which originally nominated the property, or by the Keeper, as appropriate. The procedures set forth for nominations shall be followed in such reconsiderations. Any property or district removed from the National Register for procedural deficiencies in the nomination and/or listing process shall automatically be considered eligible for inclusion in the National Register without further action and will be published as such in the FEDERAL REGISTER.

(b) Properties listed in the National Register prior to December 13, 1980, may only be removed from the National Register on the grounds established in paragraph (a) (1) of this section.

(c) Any person or organization may petition in writing for removal of a property from the National Register by setting forth the reasons the property should be removed on the grounds established in paragraph (a) of this section. With respect to nominations determined eligible for the National Register because the owners of private property object to listing, anyone may petition for reconsideration of whether or not the property meets the criteria for evaluation using these procedures. Petitions for removal are submitted to the Keeper by the State Historic Preservation Officer for State nominations, the Federal Preservation Officer for Federal nominations, and directly to the Keeper from persons or local governments where there is no approved State Historic Preservation Program.

(d) Petitions submitted by persons or local governments where there is no approved State Historic Preservation Program shall include a list of the owner(s). In such cases the Keeper shall notify the affected owner(s) and the chief elected local official and give them an opportunity to comment. For approved State programs, the State Historic Preservation Officer shall notify the affected owner(s) and chief elected local official and give them an opportunity to comment prior to submitting a petition for removal. The Federal Preservation Officer shall notify and obtain the comments of the appropriate State Historic Preservation Officer prior to forwarding an appeal to NPS. All comments and opinions shall be submitted with the petition.

(e) The State Historic Preservation Officer or Federal Preservation Officer shall respond in writing within 45 days of receipt to petitions for removal of property from the National Register. The response shall advise the petitioner of the State Historic Preservation Officer's or Federal Preservation Officer's views on the petition.

(f) A petitioner desiring to pursue his removal request must notify the State Historic Preservation Officer or the Federal Preservation Officer in writing within 45 days of receipt of the written views on the petition.

(g) The State Historic Preservation Officer may elect to have a property considered for removal according to the State's nomination procedures unless the petition is on procedural grounds and shall schedule it for consideration by the State Review Board as quickly as all notification requirements can be completed following procedures outlined in s 60.6, or the State Historic Preservation Officer may elect to forward the petition for removal to the Keeper with his or her comments without State Review Board consideration.

(h) Within 15 days after receipt of the petitioner's notification of intent to pursue his removal request, the State Historic Preservation Officer shall notify the petitioner in writing either that the State Review Board will consider the petition on a specified date or that the petition will be forwarded to the Keeper after notification requirements have been completed. The State Historic Preservation Officer shall forward the petitions to the Keeper for review within 15 days after notification requirements or Review Board consideration, if applicable, have been completed.

(i) Within 15 days after receipt of the petitioner notification of intent to pursue his petition, the Federal Preservation Officer shall forward the petition with his or her comments and those of the State Historic Preservation Officer to the Keeper.

(j) The Keeper shall respond to a petition for removal within 45 days of receipt, except where the Keeper must notify the owners and the chief elected local official. In such cases the Keeper shall respond within 90 days of receipt. The Keeper shall notify the petitioner and the applicable State Historic Preservation Officer, Federal Preservation Officer, or person or local government where there is no approved State Historic Preservation Program, of his decision. The State Historic Preservation Officer or Federal Preservation Officer transmitting the petition shall notify the petitioner, the owner(s), and the chief elected local official in writing of the decision. The Keeper will provide such notice for petitions from persons or local governments where there is no approved State Historic Preservation Program. The general notice may be used for properties with more than 50 owners. If the general notice is used it shall be published in one or more newspapers with general circulation in the area of the nomination.

(k) The Keeper may remove a property from the National Register on his own motion on the grounds established in paragraph (a) of this section, except for those properties listed in the National Register prior to December 13, 1980, which may only be removed from the National Register on the grounds established in paragraph (a) (1) of this section. In such cases, the Keeper will notify the nominating authority, the affected owner(s) and the applicable chief elected local official and provide them an opportunity to comment. Upon removal, the Keeper will notify the nominating authority of the basis for the removal. The state Historic Preservation Officer, Federal Preservation Officer, or person or local government which nominated the property shall notify the owner(s) and the chief elected local official of the removal.

(l) No person shall be considered to have exhausted administrative remedies with respect to removal of a property from the National Register until the Keeper has denied a petition for removal pursuant to this section.

Appendix C

CODE OF FEDERAL REGULATIONS
TITLE 36--PARKS, FORESTS, AND PUBLIC PROPERTY
CHAPTER I--NATIONAL PARK SERVICE, DEPARTMENT OF THE INTERIOR
PART 61--PROCEDURES FOR APPROVED STATE AND LOCAL GOVERNMENT HISTORIC
PRESERVATION PROGRAMS

s 61.1 Authorization.

The National Historic Preservation Act of 1966, 16; U.S.C. 470 et. seq., as amended:

(a) Requires the Secretary of the Interior (Secretary) to promulgate regulations for:

(1) Approving State historic preservation programs;

(2) Certifying local governments to carry out the purposes of the Act;

(3) The allocation by States of a share of the grants received by the States under the Act to certified local governments (CLGs);

(b) Directs the Secretary to conduct performance evaluations of State programs periodically;

(c) Directs the Secretary to administer a program of matching grants-in-aid to the States for historic preservation projects and programs approved by the Secretary;

(d) Requires the Secretary to establish guidelines for the use and distribution of funds transferred to local governments to ensure that no local government receives a disproportionate share of the funds available; and

(e) Requires the Secretary to make information available concerning professional methods and techniques for the preservation of historic properties and the administration of historic preservation programs.

s 61.2 Definitions.

As used in this part:

(a) "Approved State program" means a State historic preservation program that has been approved by the Secretary of the Interior in accordance with Sec. 101(b) of the National Historic Preservation Act, as amended. All State programs will be treated as approved programs until December 12, 1983, unless specifically disapproved by the Secretary before that time.

(b) "Certified local government" means a local government that has been certified to carry out the purposes of the National Historic Preservation Act, as amended, in accordance with section 101(c) of the Act.

(c) "Chief elected local official" means the elected head of a local government.

(d) "CLG share" means the funding authorized for transfer to local governments in accordance with section 103(c) of the National Historic Preservation Act, as amended.

(e) "Comprehensive historic preservation planning" means an ongoing process that is consistent with technical standards issued by the Department of the Interior and which produces reliable, understandable, and up-to-date information for decision making related to the identification, evaluation, and protection/treatment of historic resources.

(f) "Comprehensive statewide historic preservation plan" means the part of the planning process that conforms to the Secretary's Standards for Preservation Planning and is approved as part of the State Program Approval Process. The comprehensive plan entails the organization into a logical sequence of preservation information pertaining to identification, evaluation, registration, and treatment of historic properties, and setting priorities for accomplishing preservation activities.

(g) "Historic Preservation Fund" means the monies accrued under the Outer Continental Shelf Lands Act, as amended, to support the program of matching grants-in-aid to the States for historic preservation programs and projects, as authorized by Sec. 101(d)(1) of the National Historic Preservation Act, as amended.

(h) "Historic preservation review commission" means a board, council, commission, or other similar collegial body which is established in accordance with s 61.4 (c)(2) of these rules.

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

(j) "National Register of Historic Places" means the national list of districts, sites, buildings, structures, and objects significant in American history, architecture, archeology, engineering, and culture, maintained by the Secretary of the Interior under authority of section 101(a)(1)(A) of the National Historic Preservation Act, as amended.

(k) "The National Register Programs Manual" means the manual that sets forth NPS administrative procedures and guidelines for activities concerning the federally related historic preservation programs of the National Trust for Historic Preservation, the States, and local governments. This manual includes guidelines and procedures for the administration of the historic preservation grants-in-aid program, and supercedes the HPF Grants Management Manual.

(l) "National Park Service" means the bureau of the Department of the Interior to which the Secretary of the Interior has delegated the authority and responsibility for administering the National Historic Preservation Program.

(m) "Secretary" means the Secretary of the Interior. Unless otherwise stated in law or regulation, the Secretary has delegated the authority and responsibility for administering the National Historic Preservation Program to the National Park Service.

(n) "Secretary's Standards and Guidelines" means the Secretary of the Interior's Standards and Guidelines for Archeology and Historic Preservation. The Standards and Guidelines provide technical information about archeological and historic preservation activities and methods. The Standards and Guidelines are prepared under the authority of Sections 101(f), (g), and (h), and Section 110 of the Act. The subjects covered in the Standards and Guidelines may include: Preservation Planning, Identification, Evaluation, Registration, Historic Research and Documentation, Architectural and Engineering Documentation, Archeological Investigation, Historic Preservation Projects, and Preservation Terminology.

(o) "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 Territories of the Pacific Islands.

(p) "State Historic Preservation Officer" is the official within each State who has been designated and appointed by the Governor to administer the State historic preservation program in the State.

(q) "State Program" means the State historic preservation program in the State.

(r) "Subgrantee" means the agency, institution, organization or individual to which a subgrant is made by the State and which is accountable to the State for use of the funds provided.

s 61.3 Implementation of 36 CFR Part 61.

(a) The National Register Programs Manual. The National Park Service maintains this Manual for the use of the States, Certified Local Governments, and the National Trust for Historic Preservation in performing federally related historic preservation activities authorized by the National Historic Preservation Act, as amended.

(1) The Manual is the vehicle through which the National Park Service implements 36 CFR Part 61.

(2) The Manual provides guidelines and procedures for approved historic preservation programs to use matching grant assistance for preservation program activities.

(3) The Manual does not include technical information on preservation techniques.

(b) The Secretary of the Interior's Standards and Guidelines. The National Register Programs Manual includes The Secretary of the Interior's Standards and Guidelines for Archeology and Historic Preservation. The Standards and Guidelines apply to federally authorized activities and will be used by the National Park Service as the technical performance standards for matters covered by these rules.

(c) Availability of The National Register Programs Manual.

(1) Copies of the Manual may be obtained from the National Park Service.

(2) The National Park Service issues updates of the Manual as necessary and annually issues a summary of all additions, changes, or deletions made during the previous fiscal year.

s 61.4 Approved State Programs.

(a) A State Historic Preservation Officer (SHPO) shall be appointed by the Governor to administer the State historic preservation program.

(b) It shall be the responsibility of the SHPO to:

(1) Direct and conduct a comprehensive statewide survey of historic properties and maintain an inventory of such properties; this high priority responsibility entails locating historic and archeological resources at a level of documentation such that the resources can be evaluated for potential nomination to the National Register of Historic Places and so that the survey data collected can be incorporated into State priorities and planning decisions concerning the area surveyed;

(2) Identify and nominate eligible properties to the National Register of Historic Places and otherwise administer applications for the National Register (see 36 CFR Part 60: "National Register of Historic Places");

(3) Prepare and implement a comprehensive statewide historic preservation planning process; this high priority responsibility entails the organization of preservation activities (identification, evaluation, registration, and treatment of historic properties) into a logical

interrelated sequence so that effective and efficient decisions and/or recommendations can be made concerning preservation in the State;

(4) Administer the State program of Federal assistance for historic preservation within the State; if Historic Preservation Fund (HPF) monies are appropriated, this includes the administration of the HPF Grant-in-Aid program;

(5) Advise and assist Federal, State, and local government agencies in carrying out their historic preservation responsibilities;

(6) Cooperate with the Secretary, the Advisory Council on Historic Preservation, and other Federal, State, and local government agencies to ensure that historic properties are taken into consideration at all levels of planning and development;

(7) Provide public information, education, training, and technical assistance relating to the National and State historic preservation programs; and otherwise fulfill the State's liaison responsibility with the Federal preservation programs, other States, local governments, Indian tribes, private organizations, and individuals;

(8) Cooperate with local governments in development of local historic preservation programs and assist local governments in becoming certified.

(c)(1) State programs shall be approved by the Secretary if he determines that the program meets the requirements of paragraphs (a), (b), (d), (e), and (f) of this section. Compliance with these requirements shall be evaluated by the Secretary as required by s 61.4 of these regulations. These evaluations shall determine the State's continued eligibility for approved program status.

(2) Procedures for Review and Approval of State Historic Preservation Programs.

(i) The Secretary will evaluate each State program for compliance with the requirements of the Act and other applicable laws and regulations. The program evaluation process will be conducted after the end of every second or third fiscal year. It will be rigorous with respect to assessing the State's performance of the requirements in the Act. The State programs will be selectively examined to the depth of existing regulations and standards pertinent to each requirement but only to the extent these were in effect during the performance period being evaluated. The Secretary will verify the accuracy of required periodic State reports used in allocating grant funds and in reporting on the status of the national historic preservation program and provide States with analyses of program strengths and weaknesses.

(ii) The categories of activities to be evaluated are:

(A) Requirements of the Act.

- (1) Legal authority and designation of the State Historic Preservation Officer.
- (2) State Staff Qualifications and Composition.
- (3) State Review Board Qualifications and Composition.
- (4) Historic Preservation Fund Grant Management.
- (5) Comprehensive Historic Preservation Planning.
- (6) Survey and Inventory.
- (7) National Register.

- (8) Public Participation.
- (9) Technical Assistance to Governmental Agencies.
- (10) Review and Compliance.
- (11) Public Education.
- (12) Certification Assistance to Local Governments.

- (B) Conditions and other requirements as specified in The National Register Programs Manual (NPS Guideline 49).
- (C) Annual Historic Preservation Fund grant applications.
- (D) OMB circular and Treasury requirements.
- (E) Appropriate implementing regulations.

(iii) The Secretary will use a combination of on-site and off-site inquiries to perform the evaluation. To achieve uniformity of review and comprehensive coverage of the approval criteria, the following questions will generally form the basis for verifying State activities for each of the requirements:

- (A) Is there an adequate system or process in place for the requirement?
- (B) Is the system or process being used such that a minimal level of activity for each requirement can be demonstrated?
- (C) Have all conditions of any grant awards been met?
- (D) Are the data contained in the previous year's End-of-Year Report accurate?

(iv) Approval Method.

(A) States meeting all requirements in the review will receive immediate official notice that their approved status is continued.

(B) States not meeting all requirements will receive immediate notice of deficiencies along with recommendations on how to correct them. The Secretary will defer making a decision on program approval for up to a 4 month period during which time technical assistance in correcting the problems will be offered. States must either correct cited deficiencies, or provide an acceptable justification for requiring additional time and a plan and timetable for correcting deficiencies. During this period, States have the opportunity to appeal to the Secretary any findings and recommendations.

(C) States successfully resolving deficiencies will receive notice from the Secretary that their approved status is continued. Once approved status is renewed, States will not be reviewed until the next regular evaluation period, although evaluations may be conducted more often in individual States if the Secretary deems this necessary. The Secretary may disapprove a State program as a result of any such evaluation subject to the provisions of Sec. 61.4(c)(2)(iv) (A), (B), and (D).

(D) States will be "disapproved" only when, after the expiration of the specified period, they are officially notified that their approved status is removed for failure to correct cited deficiencies. The Secretary will then initiate financial suspension and other actions in

accordance with administrative guidelines specified in The National Register Programs Manual (NPS Guideline 49).

(v) Instructions on carrying out the evaluation process are provided in The National Register Programs Manual (NPS Guideline 49).

(d) A professionally qualified staff shall be appointed or employed by the State historic preservation program.

(1) Except as approved pursuant to paragraph (d)(2) of this section, the staff shall include at a minimum, one full-time professional in each of the following disciplines: history, archeology, and architectural history. Required professional State staff members shall meet the standards set forth in Appendix A to these rules. Two or more part-time staff members may be substituted for one full-time professional in any of the required disciplines as long as the equivalent of one full-time professional is achieved in each discipline. States shall determine what other professional disciplines, such as planning, law, architecture, historic architecture, historical archeology, accounting and grants management are needed to carry out the responsibilities of the State historic preservation program. State professional staff members approved by the Secretary prior to September 21 1977, shall remain approved until such time that they are no longer employed on the State staff.

(2) The Secretary will consider proposals submitted by States for alternative staffing requirements for States with resources and needs which cannot be served or met by the composition outlined in paragraph (d)(1) of this section. Such alternative requirements must ensure adequate professional expertise on the staff, comparable to that required in paragraph (d)(1) of this section, to perform the required responsibilities of the State. These proposals will be reviewed and approved by the Secretary in writing on a State-by-State basis. Approved alternatives will remain in effect until they are reviewed, at the Secretary's discretion, or at the request of the State.

(3) The State shall annually certify according to procedures provided by the Secretary that the State program meets the minimum staffing requirements.

(4) When a required staff position becomes vacant, and if the expertise of the person filling that position is required by law, regulation, or implementing procedure the State shall take immediate steps to ensure that the requisite expertise is replaced. This may be done on a temporary basis (such as by contracting the responsibility) pending the permanent filling of the vacant required staff position. Measures taken pursuant to s 61.4(d)(2) or s 61.8 are other possible techniques to follow. However, States should ensure that technical matters are addressed by the corresponding technical expertise.

(5) If these requirements for permanent required staff are not met for a period exceeding three months, the State shall communicate by letter to NPS, the timetable for filling the vacancy, or propose an alternative pursuant to paragraph (d)(2) of this section.

(6) If the lapse in staffing requirements persists for more than six months, the Secretary may require further restrictions in State program operations or HPF financial assistance that will remain in effect until the staff vacancy has been filled or an alternative has been approved by the Secretary pursuant to paragraph (d)(2) of this section.

(e) An adequate and qualified State historic preservation Review Board shall be designated by the SHPO unless an alternative method of appointment is provided by State law.

(1) The State Review Board shall consist of at least five persons. The Review Board shall consist of members who have demonstrated a competence, interest, or knowledge in historic preservation and a majority of Review Board

members shall be recognized professionals in the following and related disciplines defined in Appendix A to these rules. Except as approved pursuant to paragraph (e)(4) of this section, the membership shall include a minimum of one professional in each of the following disciplines: history, prehistoric and historic archeology, and architectural history and architecture. All of these professionals shall meet the standards set forth in Appendix A. The State shall determine what other professional disciplines and/or additional members are needed.

(2) The archeologist shall be qualified in both prehistoric and historic archeology, or an additional qualified person shall be appointed to the State Review Board so that expertise in both prehistoric and historic archeology will be represented.

(3) The architectural historian or architect shall be qualified in both architectural history and architecture or an additional qualified person shall be appointed to the State Review Board so that expertise in both architectural history and architecture will be represented.

(4) The Secretary will consider proposals for alternative Review Board requirements for States with historic resources and needs which cannot be served or met by the composition outlined in paragraph (e)(1) of this section. Such alternative requirements must ensure adequate professional expertise on the Review Board, comparable to that required in paragraph (e)(1) of this section to perform the responsibilities of the Review Board. Such proposals will be reviewed and approved in writing by the Secretary on a State-by-State basis. Approved alternatives will remain in effect until they are reviewed, at the Secretary's discretion, or at the request of the State.

(5) The State shall annually certify according to procedures provided by the Secretary that the State program meets the minimum Review Board requirements. If these requirements are not met for a period exceeding three months, the State shall communicate by letter to the Secretary, the timetable for filling the vacancy, or propose to NPS an alternative pursuant to paragraph (e)(4) of this section. During such lapse in minimum Review Board requirements, the State shall take steps to ensure that temporary measures provide expertise so that the Review Board continues to operate as a professional body that can objectively evaluate the historic significance of properties and provide professional advice on historic preservation matters. If a lapse in Review Board requirements persists for more than six months, the Secretary may require further restrictions in State program operations or HPF financial assistance to remain in effect until the Review Board vacancy has been filled or an alternative has been proposed and approved by the Secretary pursuant to paragraph (e)(4) of this section.

(6) The State Review Board shall meet at least three times a year and shall adopt procedures governing its operations consistent with the provisions of this section. In making decisions the Review Board must have access to the expertise necessary to make objective professional judgments.

(7) The responsibilities that the State Review Board performs include, but need not be limited to, the following:

(i) Reviewing each National Register nomination proposal prior to submission to the National Register to determine whether or not the property meets the National Register criteria for evaluation, and to make a recommendation that the State nominate or reject the proposed nomination;

(ii) Participating in the review of appeals to National Register nominations and providing written opinions on the significance of the properties;

(iii) Providing advice to the State about documentation submitted

in conjunction with the Historic Preservation Fund including but not limited to grant applications, end-of-year reports, and the State comprehensive historic preservation planning process;

(iv) Providing general advice, guidance, and professional recommendations to the SHPO in carrying out the duties and responsibilities listed in s 61.4(b).

(f) Mechanisms shall be provided for adequate public participation in the State historic preservation program. As part of the process of recommending properties to the National Register, the State shall comply with all consultation and notification procedures contained in 36 CFR Part 60.6.

(g) Any State may carry out all or any part of its responsibilities by contract or cooperative agreement with any qualified nonprofit organization, educational institution or otherwise pursuant to State law. A State may not delegate its responsibility for compliance with grant assistance terms and conditions.

s 61.5 Approved Local Programs.

(a) All approved State programs shall provide a mechanism for certifying local governments to participate in the National program.

(b) All approved State historic preservation programs shall develop, for approval by the Secretary, procedures for the certification of local governments. Procedures also shall be defined for removal of CLG status for cause. States shall indicate specific requirements for certification, specific responsibilities that will be delegated to certified local governments (CLGs), and the schedule for the certification process. The requirements outlined in paragraph (c) of this section must be incorporated into the State's process for local certification that is submitted to the Secretary for approval. Beyond the minimum delegations of authority that must be made to all CLGs, States may make additional delegations of responsibility to individual CLGs. These delegations may not include the State's overall responsibility derived from the National Historic Preservation Act, as amended, or where specified by law or regulation (e.g., the operations of the Review Board and nominations to the National Register). Regulations and standards governing performance of State functions (e.g., rules relating to conflict of interest) are to be enforced by States when the functions are delegated.

(c) States shall require local governments to satisfy the following minimum requirements:

(1) Enforce appropriate State or local legislation for the designation and protection of historic properties. The State shall define what constitutes appropriate legislation so long as it is consistent with the purposes of the Act. Where State enabling legislation or home rule authority permits local historic preservation ordinances, a State may require adoption of an ordinance and indicate specific provisions that must be included in the ordinance.

(2) Establish by State or local law an adequate and qualified historic preservation review commission (Commission) composed of professional and lay members. All Commission members shall have a demonstrated interest, competence, or knowledge in historic preservation. To the extent available in the community, the local government shall appoint professional members from the disciplines of architecture, history, architectural history, planning, archeology, or other historic preservation related disciplines, such as urban planning, American Studies, American Civilization, Cultural Geography, or Cultural Anthropology.

(i) States may specify the minimum number and type of professional members that the local government shall appoint to the Commission and indicate how additional expertise can be obtained. Requirements set by the State for local Commissions shall not be more stringent or comprehensive than its requirements for the State Review Board. Local governments may be certified without the minimum number or types of disciplines if they can demonstrate that they have made a reasonable effort to fill those positions. When a discipline is not represented in the Commission membership, the Commission shall be required to seek expertise in this area when considering National Register nominations and other actions that will impact properties which are normally evaluated by a professional in such discipline. This can be accomplished through consulting (e.g., universities, private preservation organizations, or regional planning commissions) or by other means that the State determines appropriate.

(ii) States shall specify the role and responsibilities of the local government's Commission in local preservation decisions. These responsibilities must be complementary to and carried out in coordination with those of the State as outlined in § 61.4(b) of these rules.

(iii) States shall make available orientation materials and training to all local Commissions. The orientation and training shall be designed to provide a working knowledge of the roles and operations of Federal, State, and local preservation programs.

(3) Maintain a system for the survey and inventory of historic properties. States shall formulate guidelines for local survey and inventory systems which ensure that such systems and the data they produce can be readily integrated into statewide comprehensive historic preservation planning and other appropriate planning processes. Local government survey and inventory efforts shall be coordinated with and complementary to those of the State. The State also shall require that local survey data be in a format that is consistent with the planning processes noted above.

(4) Provide for adequate public participation in the historic preservation program, including the process of recommending properties to the National Register. States shall require adequate public participation in relation to all responsibilities that are delegated to CLGs. States shall outline specific mechanisms to ensure adequate public participation in local preservation programs. These may include requirements for open meetings, published minutes, and the publication of procedures by which assessments of potential National Register nominations, design review, etc. will be carried out as well as compliance with appropriate regulations. National Register notification requirements may be found in 36 CFR Part 60.

(5) Satisfactorily perform the responsibilities delegated to it under the Act. States shall monitor and evaluate the performance of CLGs. States shall outline procedures and standards by which the performance of CLGs in program operation and administration will be evaluated. Written records shall be maintained for all State evaluations of CLGs so that results are available for the Secretary's performance evaluations of States. If a State evaluation of a CLG's performance indicates that, in the State's judgment, such performance is inadequate, the State shall suggest ways to improve performance. If, after a period of time stipulated by the State, the State determines that there has not been sufficient improvement, it may recommend decertification of the local government to the Secretary for his concurrence. This recommendation shall cite the specific reasons why decertification is proposed. If the Secretary does not object within 30 working days of receipt, the decertification shall be considered approved by the Secretary. Appropriately documented State recommendations for decertification ordinarily will be accepted by the Secretary. When a local government is decertified, the State shall conduct financial assistance closeout procedures as specified in The National Register Programs Manual.

(d) Effects of certification:

(1) Inclusion in the process of nominating properties to the National Register of Historic Places in accordance with Sections 101 (c) (2) (A) and (c) (2) (B) of the Act. The State may delegate to a CLG any of the responsibilities of the SHPO and the State Review Board in processing National Register nominations as specified in 36 CFR Part 60, except for the authority to review and nominate properties directly to the National Register. CLGs may make nominations directly to the National Park Service only when the State does not have an approved program. States shall ensure that CLG performance of these responsibilities is consistent and coordinated with the identification, evaluation, and preservation priorities of the comprehensive State historic preservation planning process.

(2) Eligibility to apply for a portion of the State's annual HPF grant. At least 10 percent of the State's annual HPF apportionment shall be set aside for transfer to CLGs. All CLGs in the State shall be eligible to receive funds from the designated CLG share of the State's annual HPF grant; no government, however, is automatically entitled to receive funds. Local governments that receive these monies shall be considered subgrantees of the State.

(3) The requirements set forth in paragraph (c) of this section may be amplified by the Secretary and/or the States as necessary to reflect particular State and or local government program concerns.

(e) States shall submit, within 180 days of publication of the final rule for local certification and funds transfer, their proposed local certification processes to the Secretary for review and approval. In developing the submission, the State shall consult with local governments, local historic preservation commissions, and all other parties likely to be interested in the CLG process; consider local preservation needs and capabilities; and invite comments on the proposed process from local governments, commissions, and parties in the State likely to be interested. The State's proposal shall review the results of this consultation process. States shall keep a record of their consultation processes and make them available to the Secretary upon request.

(f) States shall establish procedures to ensure that all parties likely to be interested are notified and provide a 60-day period for public comment on the proposal before it is submitted to the Secretary. Records of all comments received during the commenting period shall be kept by the State and shall be made available to the Secretary upon request. The State should be able to respond to all suggestions that it does not adopt.

(g) The Secretary shall review State proposals and within 90 days of receipt issue an approval or disapproval. This review will be based on compliance with all requirements set forth in this section.

(h) If a State proposal is disapproved, the Secretary will recommend changes that would make the proposed process acceptable and, in consultation with the State, will designate a date by which the revision must be submitted. Final approval by the Secretary must be achieved by October 1, 1985, or States will be ineligible to continue their approved State program status beyond that time.

(i) A State may begin certification of local governments as soon as the State's proposed certification process is approved by the Secretary. When a local government certification request has been approved in accordance with the State's approved certification process, the State shall prepare a written certification agreement that lists the specific responsibilities of the local government when certified. The State shall forward to the Secretary a copy of the approved request and the certification agreement. If the Secretary does not take exception to the request within 15 working days of receipt, the local

government shall be regarded as certified by the Secretary.

(j) A State may agree with a CLG to change the delegation of responsibilities by amending the certification agreement. The State must submit the amendment to the National Park Service for review to ensure that it is in conformance with the approved State process, this rule, and the Act. If the National Park Service does not object within 15 working days, the amendment shall be considered approved.

(k) States may amend their approved State certification and funds transfer processes. In developing the amendment, the State shall follow to the extent appropriate the same consultation procedures outlined in s 61.5(e)/(f) and s 61.7(g)(h). The State shall submit the proposed amendment to the National Park Service. The National Park Service shall review the proposed amendment for conformance with this rule and the Act, and, within 45 working days of receipt, issue an approval or disapproval notice.

(l) State administration of its local certification process shall be reviewed by the Secretary during performance evaluations and audits of State programs as required by section 101(b)(2) of the National Historic Preservation Act, as amended. Local governments may appeal to the Secretary State decisions to deny certification or to decertify. Appealed actions shall be examined for conformance with approved State procedures for CLGs, these regulations, and the Act.

(m) The District of Columbia shall be exempted from the requirements of section 61.5 because there are no subordinated local governments in the District. If a territory believes that its political subdivisions lack authorities similar to those of local governments in other States and hence cannot satisfy the requirements for local certification, it may apply to the Secretary for exemption from the requirements of s 61.5.

(n) Procedures for direct certification by the Secretary where there is no approved State program.

(1) When there is no approved State program, local governments wishing to be certified must apply directly to the Secretary.

(2) The application must demonstrate that the local government meets the specifications for certification set forth in paragraph (c) of this section.

(3) The Secretary shall review certification applications under this subsection and take action within 90 days of receipt.

(4) To the extent feasible, the Secretary will ensure that there is consistency and continuity in the CLG program of a State that does not have an approved historic preservation program. Therefore, if a now disapproved State program had an approved local government certification process and had already certified local governments, the Secretary will consider the process in his review of any applications for local government certification from within the State.

s 61.6 Grants to Approved State Programs.

(a) All States with approved State historic preservation programs shall be eligible for matching grants-in-aid from the Historic Preservation Fund for carrying out the responsibilities of the SHPO including preparing comprehensive statewide historic surveys and plans, and for preserving and protecting properties listed in the National Register of Historic Places.

(b) Administration of HPF matching grants-in-aid shall be in accordance with The National Register Programs Manual. States receiving HPF grants shall adhere to the procedures and guidelines in The National Register Programs Manual and its supplements.

(c) States are responsible, through financial audit, for the proper accounting of HPF grants in accordance with OMB Circular A-102, Attachment P, "Audit Requirements," and The National Register Programs Manual.

(d) States are responsible, through the program performance evaluation requirements of s 61.4(c), for administration of HPF grants in accordance with the requirements of this section.

s 61.7 Transfer of Grants to Certified Local Governments.

(a) At least 10 percent of each State's annual HPF allocation shall be designated for transfer by States to CLGs as subgrants. States may transfer more than 10 percent unless otherwise prohibited. Any year in which the annual HPF State grant appropriation exceeds \$65,000,000, one half of the excess shall also be transferred to CLGs according to procedures to be provided by the Secretary.

(b) All CLGs shall be eligible to receive funds from the 10 percent (or greater) CLG share of the State's total annual HPF grant award. The State is not required to award funds to all governments that are eligible to receive funds.

(c) CLGs receiving HPF grants from the CLG share shall be considered subgrantees of the State. Transferred monies shall not be applied as matching share for any other Federal grant.

(d) States shall require all local governments receiving a portion of the local share of the State's annual HPF grant to satisfy the following minimum requirements:

(1) Maintain adequate financial management systems. Local financial management systems shall be in accordance with the standards specified in OMB Circular A-102, Attachment G, "Standards for Grantee Financial Management Systems." Local financial management systems shall be auditable in accordance with the General Accounting Office's Standards for Audit of Governmental Organizations, Programs, Activities, and Functions. States shall be responsible, through financial audit, for the proper accounting of HPF CLG share monies in accordance with OMB Circular A-102, Attachment P, "Audit Requirements." The periodic State evaluations of CLG performance shall include an assessment of the fiscal management of HPF monies.

(2) Adhere to all requirements of The National Register Programs Manual. The National Register Programs Manual sets forth administrative procedures and policies for HPF grants awarded by the Secretary. It serves as a basic reference for the State management of HPF grants. Indirect costs may be charged as part of the CLG grant only if the CLG subgrantee meets the requirements of the Manual. Unless the CLG has a current indirect cost rate approved by the cognizant Federal agency, only direct costs may be charged.

(3) Adhere to any requirements mandated by Congress regarding the use of such funds. The Secretary will advise States of any directives contained in annual appropriations laws regarding the use of HPF State grants that must be applied to local governments receiving a share of these grants.

(e) The requirements listed in paragraph (d) of this section shall be used by States as minimum requirements for local governments receiving HPF funds; they also shall be included in the State's required written grant agreement with the local government. States may require specific uses of funds as long as such requirements are consistent with the State comprehensive historic preservation planning process and are eligible for HPF assistance.

(f) Each State shall develop, for approval by the Secretary, a procedure

for allocating the CLG share of its annual Historic Preservation Fund grant to eligible local governments in the State. States shall articulate a clear rationale on which funding decisions will be based. Although only aggregate program matching funds are required, States may require a matching share for CLG grants, but if excess matching funds are available from other sources, ability to provide matching funds need not be a primary allocation factor. Allocation procedures shall include guidelines for the review of applications and the selection of applicants. At a minimum, these guidelines shall include the following:

(1) The amount awarded to any applicant must be sufficient to produce a specific impact. While no lower limit is prescribed by these rules, States must ensure that the funds awarded are sufficient to generate effects directly as a result of the funds transfer. The requirement for tangible results may not be waived even if there are many otherwise eligible applicants for the amount set aside for CLG share; States may use additional funds from their regular HPF annual grant to satisfy competing demands.

(2) To promote local preservation activities, States shall make reasonable efforts to distribute these monies among the maximum number of eligible local jurisdictions to the extent that such distribution is consistent with paragraph (f)(1) of this section. States also shall seek to ensure a reasonable distribution between urban and rural areas in the State. States must ensure that no CLG receives a disproportionate share of the allocation.

(3) States shall make available to the public, upon request, the rationale for the applicants selected and the amounts awarded.

(g) Within 180 days of publication of final rules for local certification and funds transfer, but not before submitting their proposed local certification process, States shall submit to the Secretary for review and approval their proposed procedure for transfer of funds.

(h) States shall set up notice procedures to ensure that all parties likely to be interested are notified and provide a 60-day period for public comment on the proposal before it is submitted to the Secretary. Records of all comments received during the commenting period shall be kept by the State and shall be made available to the Secretary upon request.

(i) The Secretary shall review State proposals and within 90 days of receipt issue an approval or disapproval. This review will be based on compliance with the requirements set forth in this section.

(j) If a State proposal is disapproved, the Secretary will recommend changes that would make the proposed process acceptable and, in consultation with the State, will designate a date by which the revision must be submitted. Final approval by the Secretary must be achieved by October 1, 1985, or States will be ineligible to continue their approved State program status beyond that time.

(k) Once a State's proposed process for funds transfer has been approved by the Secretary and the Secretary has obligated the State's annual HPF grant; the State shall begin the transfer of HPF monies unless otherwise prohibited as a consequence of actions described in s 61.7(d)(3).

(l) Each State shall ensure that its procedure is widely publicized so that all eligible local governments have the opportunity to apply for funding.

(m) States shall be responsible for reviewing requests from CLG subgrantees for grant amendments as required by OMB Circular A-87, and for issuing approval or denial of such requests. If any action by a CLG will result in a change in the overall grant project or budget requiring NPS approval, the

State shall obtain such approval prior to granting approval to the CLG subgrantee. A State shall not forward to NPS any action which is inconsistent with the purpose or terms of the grant. CLG subgrantee requests for revisions to the grant are invalid unless they are in writing and signed by an authorized official of the State grantee.

(n) State performance in transferring funds to CLGs shall be reviewed by the Secretary during performance evaluations and audits of State programs as required by Sec. 101(b)(2) of the National Historic Preservation Act, as amended.

(o) States may submit grant amendment requests to NPS to reallocate monies set aside for local governments in instances where no certified governments exist, wish to receive funds, or are qualified to receive funds. Such requests will be considered grant reprogramming actions and shall be submitted to NPS not less than one calendar year after the beginning of the fiscal year of the State's HPF appropriation. All such requests shall clearly document the State's attempts to encourage and assist local governments in developing local historic preservation programs pursuant to Section 61.5 of these regulations, in being certified, and in applying for funding.

(p) The District of Columbia shall be exempted from the requirements of s 61.7 because there are no subordinate local governments in the District. If a territory believes that its political subdivisions lack authorities similar to those of local governments in other States and hence cannot satisfy the requirements for local certification, it may apply to the Secretary for exemption from the requirements of s 61.7.

(q) Where there is no approved State program, the method for allocating funds will be determined by the Secretary in accordance with the procedures set forth for States in this section. To the extent feasible, there should be consistency and continuity in funding allocation policy of the CLG program of a State that does not have an approved historic preservation program. Therefore, if a now disapproved State program had an approved allocation process, the Secretary will consider it in the review of any application for funding from CLGs within that State.

s 61.8 Waiver.

The Secretary may waive any of the requirements of these rules which are not mandated by statute or by government-wide regulations, if, in his/her opinion, as expressed in writing to the State, the State historic preservation program would benefit from such waiver, and the purposes, conditions, and requirements of the National Historic Preservation Act, as amended, would not be compromised.

s 61.9 Information Collection Requirements.

The information collection requirements contained in this part have been approved by the Office of Management and Budget under 44 U.S.C. 3507, et seq., and assigned clearance number 1024-0038. The information is being collected as part of the process of reviewing the procedures and programs of State and local governments participating in the National historic preservation program. The information will be used to evaluate those procedures and programs. The obligation to respond is required to obtain a benefit.

Appendix A to Part 61--Professional Qualifications Standards

In the following definitions, a year of full-time professional experience need not consist of a continuous year of full-time work but may be made up of

discontinuous periods of full-time or part-time work adding up to the equivalent of a year of full-time experience.

(a) History. The minimum professional qualifications in history are a graduate degree in history or closely related field; or a bachelor's degree in history or closely related field plus one of the following:

(1) At least two years of full-time experience in research, writing, teaching, interpretation or other demonstrable professional activity with an academic institution, historical organization or agency, museum, or other professional institution; or

(2) Substantial contribution through research and publication to the body of scholarly knowledge in the field of history.

(b) Archeology. The minimum professional qualifications in archeology are a graduate degree in archeology, anthropology, or closely related field plus:

(1) At least one year of full-time professional experience or equivalent specialized training in archeological research, administration or management;

(2) At least four months of supervised field and analytic experience in general North American archeology; and

(3) Demonstrated ability to carry research to completion.

In addition, to these minimum qualifications, a professional in prehistoric archeology shall have at least one year of full-time professional experience at a supervisory level in the study of archeological resources of the prehistoric period. A professional in historic archeology shall have at least one year of full-time professional experience at a supervisory level in the study of archeological resources of the historic period.

(c) Architectural history. The minimum professional qualifications in architectural history are a graduate degree in architectural history, art history, historic preservation, or closely related field, with coursework in American architectural history; or a bachelor's degree in architectural history, art history, historic preservation, or closely related field plus one of the following:

(1) At least two years of full-time experience in research, writing, or teaching in American architectural history or restoration architecture with an academic institution, historical organization or agency, museum, or other professional institution; or

(2) Substantial contribution through research and publication to the body of scholarly knowledge in the field of American architectural history.

(d) Architecture. The minimum professional qualifications in architecture are a professional degree in architecture plus at least two years of full-time professional experience in architecture; or a State license to practice architecture.

(e) Historic Architecture. The minimum professional qualifications in historic architecture are a professional degree in architecture or State license to practice architecture, plus one of the following:

(1) At least one year of graduate study in architectural preservation, American architectural history, preservation planning, or closely related field; or

(2) At least one year of full-time professional experience on historic preservation projects. Such graduate study or experience shall include detailed investigations of historic structures, preparation of historic

structures research reports, and preparation of plans and specification for preservation projects.

Appendix B to Part 61--Information Sources

The following National Park Service Regional Offices and State Historic Preservation Offices are sources of information concerning the programs covered by these regulations.

Alaska Regional Office

Alaska Regional Office, 2520 Gambell Street, Anchorage, Alaska 99503, 907-277-1666

Alaska: Chief of History and Archeology, Division of Parks, Department of Natural Resources, 619 Warehouse Avenue, Suite 210, Anchorage, Alaska 99501, 907-274-4646

Mid-Atlantic Region

Mid-Atlantic Region, 143 South Third St., Philadelphia, PA 19106, 215-597-8068

Connecticut: Connecticut Historical Commission, 59 South Prospect Street, Hartford, Connecticut 06106, 203-566-3005

Delaware: Division of Historical & Cultural Affairs, Hall of Records, Dover, Delaware, 19901, 302-678-5314

District of Columbia: Dept. of Consumer and Regulatory Affairs, 614 H Street, NW., Washington, D.C. 20001, 202-535-1500

Indiana: Department of Natural Resources, 608 State Office Building, Indianapolis, Indiana 46204, 317-232-4020

Maine: Maine Historic Preservation Commission, 55 Capitol Street, Station 65, Augusta, Maine 04333, 207-289-2132

Maryland: State Historic Preservation Officer John Shaw House, 21 State Circle, Annapolis, Maryland 21401, 301-269-2851

Massachusetts: Massachusetts Historical Commission, 294 Washington Street, Boston, Massachusetts 02108, 617-727-8470

Michigan: Michigan History Division, Department of State, Lansing, Michigan 48918, 517-373-6362

New Hampshire: Department of Resources & Economic Development, P.O. Box 856, Concord, New Hampshire 03301, 603-271-3484 or 3558

New Jersey: Department of Environmental Protection, CN 402, Trenton, New Jersey 08625, 609-292-2885

New York: Office of Parks Recreation & Historic Preservation, Agency Building #1, Empire State Plaza, Albany, New York 12238, 518-474-0468

Ohio: State Historic Preservation Officer, The Ohio Historical Society, Interstate 71 at 17th Avenue, Columbus, Ohio 43211, 614-466-1500

Pennsylvania: State Historic Preservation Officer, Pennsylvania Historical & Museum Commission, P.O. Box 1026, Harrisburg, Pennsylvania 17120, 717-787-2891

Commonwealth of Puerto Rico: Office of Cultural Affairs, La Fortaleza, San

Juan, Puerto Rico 00901, 809-724-2100

Rhode Island: Rhode Island Department of Community Affairs, 150 Washington Street, Providence, Rhode Island 02903, 401-277-2850

Vermont: Secretary, Agency for Development & Community Affairs, Pavilion Office Building, Montpelier, Vermont 05602, 802-828-3226

Virgin Islands: Virgin Islands Planning Board, Charlotte Amalie, St. Thomas, Virgin Islands 00801, 809-774-7859

Virginia: Virginia Historic Landmarks Commission, 221 Governor Street, Richmond, Virginia 23219, 804-786-3142

West Virginia: Department of Culture & History, State Capitol Complex, Charleston, West Virginia 25304, 304-348-0244

Rocky Mountain Region

Rocky Mountain Region, P.O. Box 25287, Denver Federal Center, Denver, CO 80225, 303-234-2560

Colorado: State Historic Preservation Officer, Colorado Heritage Center, 1300 Broadway, Denver, Colorado 80203, 303-866-3394

Illinois: Department of Conservation, 405 East Washington, Springfield, Illinois 62706, 217-782-3340

Iowa: Iowa State Historical Dept., Office of Historic Preservation, Historical Building, East 12th Street and Grand Avenue, Des Moines, Iowa 50319, 515-281-5113

Kansas: Kansas State Historical Society, 120 West 10th Street, Topeka, Kansas 66612, 913-296-3251

Minnesota: Minnesota Historical Society, 690 Cedar Street, St. Paul, Minnesota 55101, 612-296-2747

Missouri: State Department of Natural Resources, P.O. Box 176, Jefferson City, Missouri 65101, 314-751-4422

Montana: Montana Historical Society, 225 North Roberts Street, Veterans Memorial Building, Helena, Montana 59601, 406-449-2694

Nebraska: The Nebraska State Historical Society, 1500 R Street, Lincoln, Nebraska 68508, 402-471-3850

New Mexico: Historic Preservation Division, Office of Cultural Affairs, Villa Rivera, Room 101, 228 E. Palace Avenue, Santa Fe, New Mexico 87503, 505-827-8320

North Dakota: State Historical Society of North Dakota, Liberty Memorial Building, Bismarck, North Dakota 58501, 701-224-2667

Oklahoma: State Historic Preservation Officer, Oklahoma Historical Society, Historical Building, Oklahoma City, Oklahoma 73105, 405-521-2491

South Dakota: State Historic Preservation Officer, Historical Preservation Center, University of South Dakota, Alumni House, Vermillion, South Dakota 57069, 605-677-5314

Texas: Texas Historical Commission, P.O. Box 12276, Capitol Station, Austin, Texas 78711, 512-475-3092

Utah: Utah State Historical Society, 300 Rio Grande, Salt Lake City, Utah 84101, 801-533-7039

Wisconsin: State Historical Society of Wisconsin, 816 State Street, Madison, Wisconsin 53706, 608-262-3266

Wyoming: Wyoming Recreation Commission, 1920 Thomas Street, Cheyenne, Wyoming 82002, 307-777-7695

Southeast Regional Office

Southeast Region, 75 Spring St., NW., Atlanta, Georgia 30303, 404-242-2651

Alabama: Alabama Historical Commission, 725 Monroe Street, Montgomery, Alabama 36104, 205-832-6510

Arkansas: Arkansas Historic Preservation Program, Continental Building, Suite 500, Markham and Main Streets, Little Rock, Arkansas 72201, 501-371-2763

Florida: Bureau of Historic Preservation, Department of State, The Capitol, Tallahassee, Florida 32301, 904-487-2333

Georgia: Chief, Historic Preservation Section, Department of Natural Resources, 270 Washington, Street SW., Room 703C, Atlanta, Georgia 30334, 404-656-2840

Kentucky: State Historic Preservation Office, Kentucky Heritage Council, Capitol Plaza Tower, 9th floor, Frankfort, Kentucky 40601, 502-564-7005

Louisiana: Office of Cultural Development, P.O. Box 44247, Baton Rouge, Louisiana 70804, 504-925-3880

Mississippi: Department of Archives & History, P.O. Box 571, Jackson, Mississippi 39205, 601-359-1424

North Carolina: Department of Cultural Resources, 109 East Jones Street, Raleigh, North Carolina 27611, 919-733-7305

South Carolina: Department of Archives & History, 1430 Senate Street, Columbia, South Carolina 29211, 803-758-5816

Tennessee: Department of Conservation, 701 Broadway, Nashville, Tennessee 37203, 615-742-6747

Western Regional Office

Western Region, 450 Golden Gate Ave., San Francisco, CA 94102, 415-556-7741

American Samoa: Territorial Historic Preservation Officer, Department of Public Works, Government of American Samoa, Pago Pago, American Samoa 96799

Arizona: Chief, Office of Historic Preservation, Arizona State Parks, 1688 West Adams, Phoenix, Arizona 85007, 602-255-4174

California: State Historic Preservation Officer, Office of Historic Preservation, Department of Parks & Recreation, P.O. Box 2390, Sacramento, California 95811, 916-445-8006

Guam: Department of Parks & Recreation, P.O. Box 2950, Agana, Guam 96910, 477-9620/21, Ext. 4

Hawaii: State Historic Preservation Officer, Department of Land & Natural Resources, P.O. Box 621, Honolulu, Hawaii 96809, 808-548-7460

Idaho: Historic Preservation Coordinator, Idaho Historical Society, 610 North Julia Davis Drive, Boise, Idaho 83706, 208-334-2120

Nevada: State Historic Preservation Officer, Dept. of Conservation & Natural Resources, Rm. 123, 201 S Fall Street, Carson City, Nevada 89710, 702-885-5138

Northern Mariana Islands: Historic Preservation Officer, c/o Department of Community & Cultural Affairs, Commonwealth of the Northern Mariana Islands, Saipan, Mariana Islands 96950, 701-224-2667

Oregon: State Parks Superintendent, 525 Trade Street SE, Salem, Oregon 97310, 503-378-6305

Trust Territory of the Pacific Islands: State Historic Preservation Officer, Land Resources Branch, Department of Resources & Development, Trust Territory of the Pacific Islands, Saipan, Mariana Islands 96950

Washington: State Historic Preservation Officer, 111 West 21st Avenue, KL-11, Olympia, Washington 98504, 206-753-4011

CODE OF FEDERAL REGULATIONS
TITLE 36--PARKS, FORESTS, AND PUBLIC PROPERTY
CHAPTER VIII--ADVISORY COUNCIL ON HISTORIC PRESERVATION
PART 800--PROTECTION OF HISTORIC AND CULTURAL PROPERTIES
SUBPART A--BACKGROUND AND POLICY

s 800.1 Authorities, purposes, and participants.

(a) Authorities. Section 106 of the National Historic Preservation Act requires a Federal agency head with jurisdiction over a Federal, federally assisted, or federally licensed undertaking to take into account the effects of the agency's undertaking on properties included in or eligible for the National Register of Historic Places and, prior to approval of an undertaking, to afford the Advisory Council on Historic Preservation a reasonable opportunity to comment on the undertaking. Section 110(f) of the Act requires that Federal agency heads, 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 and, prior to approval of such undertaking, afford the Council a reasonable opportunity to comment. These regulations define the process used by a Federal agency to meet these responsibilities, commonly called the section 106 process.

(b) Purposes of the section 106 process. The Council seeks through the section 106 process to accommodate historic preservation concerns with the needs of Federal undertakings. It is designed to identify potential conflicts between the two and to help resolve such conflicts in the public interest. The Council encourages this accommodation through consultation among the Agency Official, the State Historic Preservation Officer, and other interested persons during the early stages of planning. The Council regards the consultation process as an effective means for reconciling the interests of the consulting parties. Integration of the section 106 process into the normal administrative process used by agencies for project planning ensures early, systematic consideration of historic preservation issues. To this end, the Council encourages agencies to examine their administrative processes to see that they provide adequately for the efficient identification and consideration of historic properties, that they provide for participation by the State Historic Preservation Officer and others interested in historic preservation, that they provide for timely requests for Council comment, and that they promote cost-effective implementation of the section 106 process. When impediments are found to exist in the agency's administrative process, the agency is encouraged to consult with the Council to develop special section 106 procedures suited to the agency's needs.

(c) Participants in the section 106 process--

(1) Consulting parties. Consulting parties are the primary participants in the section 106 process whose responsibilities are defined by these regulations. Consulting parties may include:

(i) Agency Official. The Agency Official with jurisdiction over an undertaking has legal responsibility for complying with section 106. It is the responsibility of the Agency Official to identify and evaluate affected historic properties, assess an undertaking's effect upon them, and afford the Council its comment opportunity. The Agency Official may use the services of grantees, applicants, consultants, or designees to prepare the necessary information and analyses, but remains responsible for section 106 compliance. The Agency Official should involve applicants for Federal assistance or approval in the section 106 process as appropriate in the manner set forth below.

(ii) State Historic Preservation Officer. The State Historic Officer coordinates State participation in the implementation of the National

Historic Preservation Act and is a key participant in the section 106 process. The role of the State Historic Preservation Officer is to consult with and assist the Agency Official when identifying historic properties, assessing effects upon them, and considering alternatives to avoid or reduce those effects. The State Historic Preservation Officer reflects the interests of the State and its citizens in the preservation of their cultural heritage and helps the Agency Official identify those persons interested in an undertaking and its effects upon historic properties. When the State Historic Preservation Officer declines to participate or does not respond within 30 days to a written request for participation, the Agency Official shall consult with the Council, without the State Historic Preservation Officer, to complete the section 106 process. The State Historic Preservation Officer may assume primary responsibility for reviewing Federal undertakings in the State by agreement with the Council as prescribed in s 800.7 of these regulations.

(iii) Council. The Council is responsible for commenting to the Agency Official on an undertaking that affects historic properties. The official authorized to carry out the Council's responsibilities under each provision of the regulations is set forth in a separate, internal delegation of authority.

(2) Interested persons. Interested persons are those organizations and individuals that are concerned with the effects of an undertaking on historic properties. Certain provisions in these regulations require that particular interested persons be invited to become consulting parties under certain circumstances. In addition, whenever the Agency Official, the State Historic Preservation Officer, and the Council, if participating, agree that active participation of an interested person will advance the objectives of section 106, they may invite that person to become a consulting party. Interested persons may include:

(i) Local governments. Local governments are encouraged to take an active role in the section 106 process when undertakings affect historic properties within their jurisdiction. When a local government has legal responsibility for section 106 compliance under programs such as the Community Development Block Grant Program, participation as a consulting party is required. When no such legal responsibility exists, the extent of local government participation is at the discretion of local government officials. If the State Historic Preservation Officer, the appropriate local government, and the Council agree, a local government whose historic preservation program has been certified pursuant to section 101(c)(1) of the Act may assume any of the duties that are given to the State Historic Preservation Officer by these regulations or that originate from agreements concluded under these regulations.

(ii) Applicants for Federal assistance, permits, and licenses. When the undertaking subject to review under section 106 is proposed by an applicant for Federal assistance or for a Federal permit or license, the applicant may choose to participate in the section 106 process in the manner prescribed in these regulations.

(iii) Indian tribes. The Agency Official, the State Historic Preservation Officer, and the Council should be sensitive to the special concerns of Indian tribes in historic preservation issues, which often extend beyond Indian lands to other historic properties. When an undertaking will affect Indian lands, the Agency Official shall invite the governing body of the responsible tribe to be a consulting party and to concur in any agreement. When an Indian tribe has established formal procedures relating to historic preservation, the Agency Official, State Historic Preservation Officer, and Council shall, to the extent feasible, carry out responsibilities under these regulations consistent with such procedures. An Indian tribe may participate in activities under these regulations in lieu of the State Historic Preservation Officer with respect to undertakings affecting its lands,

provided the Indian tribe so requests, the State Historic Preservation Officer concurs, and the Council finds that the Indian tribe's procedures meet the purposes of these regulations. When an undertaking may affect properties of historic value to an Indian tribe on non-Indian lands, the consulting parties shall afford such tribe the opportunity to participate as interested persons. Traditional cultural leaders and other Native Americans are considered to be interested persons with respect to undertakings that may affect historic properties of significance to such persons.

(iv) The public. The Council values the views of the public on historic preservation questions and encourages maximum public participation in the section 106 process. The Agency Official, in the manner described below, and the State Historic Preservation Officer should seek and consider the views of the public when taking steps to identify historic properties, evaluate effects, and develop alternatives. Public participation in the section 106 process may be fully coordinated with, and satisfied by, public participation programs carried out by Agency Officials under the authority of the National Environmental Policy Act and other pertinent statutes. Notice to the public under these statutes should adequately inform the public of preservation issues in order to elicit public views on such issues that can then be considered and resolved, when possible, in decision making. Members of the public with interests in an undertaking and its effects on historic properties should be given reasonable opportunity to have an active role in the section 106 process.

s 800.2 Definitions.

(a) "Act" means the National Historic Preservation Act of 1966, as amended, 16 U.S.C. 470-470w-6.

(b) "Agency Official" means the Federal agency head or a designee with authority over a specific undertaking, including any State or local government official who has been delegated legal responsibility for compliance with section 106 and section 110(f) in accordance with law.

(c) "Area of potential effects" means the geographic area or areas within which an undertaking may cause changes in the character or use of historic properties, if any such properties exist.

(d) "Council" means the Advisory Council on Historic Preservation or a Council member or employee designated to act for the Council.

(e) "Historic property" means any prehistoric or historic district, site, building, structure, or object included in, or eligible for inclusion in, the National Register. This term includes, for the purposes of these regulations, artifacts, records, and remains that are related to and located within such properties. The term "eligible for inclusion in the National Register" includes both properties formally determined as such by the Secretary of the Interior and all other properties that meet National Register listing criteria.

(f) "Indian lands" means all lands under the jurisdiction or control of an Indian tribe.

(g) "Indian tribe" means the governing body of any Indian tribe, band, nation, or other group that is recognized as an Indian tribe by the Secretary of the Interior and for which the United States holds land in trust or restricted status for that entity or its members. Such term also includes any Native village corporation, regional corporation, and Native Group established pursuant to the Alaska Native Claims Settlement Act, 43 U.S.C. 1701, et seq.

(h) "Interested person" means those organizations and individuals that are concerned with the effects of an undertaking on historic properties.

- (i) "Local government" means a city, county, parish, township, municipality, borough, or other general purpose political subdivision of a State.
- (j) "National Historic Landmark" means a historic property that the Secretary of the Interior has designated a National Historic Landmark.
- (k) "National Register" means the National Register of Historic Places maintained by the Secretary of the Interior.
- (l) "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).
- (m) "Secretary" means the Secretary of the Interior.
- (n) "State Historic Preservation Officer" 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.
- (o) "Undertaking" means any project, activity, or program that can result in changes in the character or use of historic properties, if any such historic properties are located in the area of potential effects. The project, activity, or program must be under the direct or indirect jurisdiction of a Federal agency or licensed or assisted by a Federal agency. Undertakings include new and continuing projects, activities, or programs and any of their elements not previously considered under section 106.

s 800.3 General.

- (a) Scope. The procedure in this subpart guides Agency Officials, State Historic Preservation Officers, and the Council in the conduct of the section 106 process. Alternative methods of meeting section 106 obligations are found in s 800.7, governing review of undertakings in States that have entered into agreements with the Council for section 106 purposes, and s 800.13, governing Programmatic Agreements with Federal agencies that pertain to specific programs or activities. Under each of these methods, the Council encourages Federal agencies to reach agreement on developing alternatives or measures to avoid or reduce effects on historic properties that meet both the needs of the undertaking and preservation concerns.
- (b) Flexible application. The Council recognizes that the procedures for the Agency Official set forth in these regulations may be implemented by the Agency Official in a flexible manner reflecting differing program requirements, as long as the purposes of section 106 of the Act and these regulations are met.
- (c) Timing. Section 106 requires the Agency Official to 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 or permit. The Council does not interpret this language to bar an Agency Official from expending funds on or authorizing nondestructive planning activities preparatory to an undertaking before complying with section 106, or to prohibit phased compliance at different stages in planning. The Agency Official should ensure that the section 106 process is initiated early in the planning stages of the undertaking, when the widest feasible range of alternatives is open for consideration. The Agency Official should establish a schedule for completing the section 106 process that is consistent with the planning and approval schedule for the undertaking.

s 800.4 Identifying historic properties.

(a) Assessing information needs.

(1) Following a determination by the Agency Official that a proposed project, activity, or program constitutes an undertaking and after establishing the undertaking's area of potential effects, the Agency Official shall:

(i) Review existing information on historic properties potentially affected by the undertaking, including any data concerning the likelihood that unidentified historic properties exist in the area of potential effects;

(ii) Request the views of the State Historic Preservation Officer on further actions to identify historic properties that may be affected; and

(iii) Seek information in accordance with agency planning processes from local governments, Indian tribes, public and private organizations, and other parties likely to have knowledge of or concerns with historic properties in the area.

(2) Based on this assessment, the Agency Official should determine any need for further actions, such as field surveys and predictive modeling, to identify historic properties.

(b) Locating historic properties. In consultation with the State Historic Preservation Officer, the Agency Official shall make a reasonable and good faith effort to identify historic properties that may be affected by the undertaking and gather sufficient information to evaluate the eligibility of these properties for the National Register. Efforts to identify historic properties should follow the Secretary's "Standards and Guidelines for Archeology and Historic Preservation" (48 FR 44716) and agency programs to meet the requirements of section 110(a)(2) of the Act.

(c) Evaluating historical significance.

(1) In consultation with the State Historic Preservation Officer and following the Secretary's Standards and Guidelines for Evaluation, the Agency Official shall apply the National Register Criteria to properties that may be affected by the undertaking and that have not been previously evaluated for National Register eligibility. The passage of time or changing perceptions of significance may justify reevaluation of properties that were previously determined to be eligible or ineligible.

(2) If the Agency Official and the State Historic Preservation Officer agree that a property is eligible under the criteria, the property shall be considered eligible for the National Register for section 106 purposes.

(3) If the Agency Official and the State Historic Preservation Officer agree that the criteria are not met, the property shall be considered not eligible for the National Register for section 106 purposes.

(4) If the Agency Official and the State Historic Preservation Officer do not agree, or if the Council or the Secretary so request, the Agency Official shall obtain a determination from the Secretary of the Interior pursuant to the applicable National Park Service regulations.

(5) If the State Historic Preservation Officer does not provide views, then the State Historic Preservation Officer is presumed to agree with the Agency Official's determination for the purpose of this subsection.

(d) When no historic properties are found. If the Agency Official determines in accordance with s s 800.4(a)-(c) that there are no historic properties that may be affected by the undertaking, the Agency Official shall provide

documentation of this finding to the State Historic Preservation Officer. The Agency Official should notify interested persons and parties known to be interested in the undertaking and its possible effects on historic properties and make the documentation available to the public. In these circumstances, the Agency Official is not required to take further steps in the section 106 process.

(e) When historic properties are found. If there are historic properties that the undertaking may affect, the Agency official shall assess the effects in accordance with Section 800.5.

s 800.5 Assessing effects.

(a) Applying the Criteria of Effect. In consultation with the State Historic Preservation Officer, the Agency Official shall apply the Criteria of Effect (s 800.9(a)) to historic properties that may be affected, giving consideration to the views, if any, of interested persons.

(b) When no effect is found. If the Agency Official finds the undertaking will have no effect on historic properties, the Agency Official shall notify the State Historic Preservation Officer and interested persons who have made their concerns known to the Agency Official and document the findings, which shall be available for public inspection. Unless the State Historic Preservation Officer objects within 15 days of receiving such notice, the Agency Official is not required to take any further steps in the section 106 process. If the State Historic Preservation Officer files a timely objection, then the procedures described in s 800.5(c) are followed.

(c) When an effect is found. If an effect on historic properties is found, the Agency Official, in consultation with the State Historic Preservation Officer, shall apply the Criteria of Adverse Effect (s 800.9(b)) to determine whether the effect of the undertaking should be considered adverse.

(d) When the effect is not considered adverse.

(1) If the Agency Official finds the effect is not adverse, the Agency Official shall:

(i) Obtain the State Historic Preservation Officer's concurrence with the finding and notify and submit to the Council summary documentation, which shall be available for public inspection; or

(ii) Submit the finding with necessary documentation (s 800.8(a)) to the Council for a 30-day review period and notify the State Historic Preservation Officer.

(2) If the Council does not object to the finding of the Agency Official within 30 days of receipt of notice, or if the Council objects but proposes changes that the Agency Official accepts, the Agency Official is not required to take any further steps in the section 106 process other than to comply with any agreement with the State Historic Preservation Officer or Council concerning the undertaking. If the Council objects and the Agency Official does not agree with changes proposed by the Council, then the effect shall be considered as adverse.

(e) When the effect is adverse. If an adverse effect on historic properties is found, the Agency Official shall notify the Council and shall consult with the State Historic Preservation Officer to seek ways to avoid or reduce the effects on historic properties. Either the Agency Official or the State Historic Preservation Officer may request the Council to participate. The Council may participate in the consultation without such a request.

(1) Involving interested persons. Interested persons shall be invited to

participate as consulting parties as follows when they so request:

(i) The head of a local government when the undertaking may affect historic properties within the local government's jurisdiction;

(ii) The representative of an Indian tribe in accordance with s 800.1(c) (2) (iii);

(iii) Applicants for or holders of grants, permits, or licenses, and owners of affected lands; and

(iv) Other interested persons when jointly determined appropriate by the Agency Official, the State Historic Preservation Officer, and the Council, if participating.

(2) Documentation. The Agency Official shall provide each of the consulting parties with the documentation set forth in s 800.8(b) and such other documentation as may be developed in the course of consultation.

(3) Informing the public. The Agency Official shall provide an adequate opportunity for members of the public to receive information and express their views. The Agency Official is encouraged to use existing agency public involvement procedures to provide this opportunity. The Agency Official, State Historic Preservation Officer, or the Council may meet with interested members of the public or conduct a public information meeting for this purpose.

(4) Agreement. If the Agency Official and the State Historic Preservation Officer agree upon how the effects will be taken into account, they shall execute a Memorandum of Agreement. When the Council participates in the consultation, it shall execute the Memorandum of Agreement along with the Agency Official and the State Historic Preservation Officer. When the Council has not participated in consultation, the Memorandum of Agreement shall be submitted to the Council for comment in accordance with s 800.6(a). As appropriate, the Agency Official, the State Historic Preservation Officer, and the Council, if participating, may agree to invite other consulting parties to concur in the agreement.

(5) Amendments. The Agency Official, the State Historic Preservation Officer, and the Council, if it was a signatory to the original agreement, may subsequently agree to an amendment to the Memorandum of Agreement. When the Council is not a party to the Memorandum of Agreement, or the Agency Official and the State Historic Preservation Officer cannot agree on changes to the Memorandum of Agreement, the proposed changes shall be submitted to the Council for comment in accordance with s 800.6.

(6) Ending consultation. The Council encourages Agency Officials and State Historic Preservation Officers to utilize the consultation process to the fullest extent practicable. After initiating consultation to seek ways to reduce or avoid effects on historic properties, State Historic Preservation Officer, the Agency Official, or the Council, at its discretion, may state that further consultation will not be productive and thereby terminate the consultation process. The Agency Official shall then request the Council's comments in accordance with s 800.6(b) and notify all other consulting parties of its requests.

s 800.6 Affording the Council an opportunity to comment.

(a) Review of a Memorandum of Agreement.

(1) When an Agency Official submits a Memorandum of Agreement accompanied by the documentation specified in s 800.8(b) and (c), the Council shall have 30 days from receipt to review it. Before this review period ends, the Council shall:

(i) Accept the Memorandum of Agreement, which concludes the section 106 process, and informs all consulting parties; or

(ii) Advise the Agency Official of changes to the Memorandum of Agreement that would make it acceptable; subsequent agreement by the Agency Official, the State Historic Preservation Officer, and the Council concludes the section 106 process; or

(iii) Decide to comment on the undertaking, in which case the Council shall provide its comments within 60 days of receiving the Agency Official's submission, unless the Agency Official agrees otherwise.

(2) If the Agency Official, the State Historic Preservation Officer, and the Council do not reach agreement in accordance with s 800.6(a)(1)(ii), the Agency Official shall notify the Council, which shall provide its comments within 30 days of receipt of notice.

(b) Comment when there is no agreement.

(1) When no Memorandum of Agreement is submitted, the Agency Official shall request Council comment and provide the documentation specified in s 800.8(d). When requested by the Agency Official, the Council shall provide its comments within 60 days of receipt of the Agency Official's request and the specified documentation.

(2) The Agency Official shall make a good faith effort to provide reasonably available additional information concerning the undertaking and shall assist the Council in arranging an onsite inspection and public meeting when requested by the Council.

(3) The Council shall provide its comments to the head of the agency requesting comment. Copies shall be provided to the State Historic Preservation Officer, interested persons, and others as appropriate.

(c) Response to Council comment.

(1) When a Memorandum of Agreement becomes final in accordance with s 800.6(a)(1)(i) or (ii), the Agency Official shall carry out the undertaking in accordance with the terms of the agreement. This evidences fulfillment of the agency's section 106 responsibilities. Failure to carry out the terms of a Memorandum of Agreement requires the Agency Official to resubmit the undertaking to the Council for comment in accordance with s 800.6.

(2) When the Council had commented pursuant to s 800.6(b), the Agency Official shall consider the Council's comments in reaching a final decision on the proposed undertaking. The Agency Official shall report the decision to the Council, and if possible, should do so prior to initiating the undertaking.

(d) Foreclosure of the Council's opportunity to comment.

(1) The Council may advise an Agency Official that it considers the agency has not provided the Council a reasonable opportunity to comment. The decision to so advise the Agency Official will be reached by a majority vote of the Council or by a majority vote of a panel consisting of three or more Council members with the concurrence of the Chairman.

(2) The Agency Official will be given notice and a reasonable opportunity to respond prior to a proposed Council determination that the agency has foreclosed the Council's opportunity to comment.

(e) Public requests to the Council.

(1) When requested by any person, the Council shall consider an Agency Official's finding under ss 800.4(b), 800.4(c), 800.4(d), or 800.5(b), and, within 30 days of receipt of the request, advise the Agency Official, the State Historic Preservation Officer, and the person making the request of its views of the Agency Official's finding.

(2) In light of the Council views, the Agency Official should reconsider the finding. However, an inquiry to the Council will not suspend action on an undertaking.

(3) When the finding concerns the eligibility of a property for the National Register, the Council shall refer the matter to the Secretary.

s 800.7 Agreements with States for section 106 reviews.

(a) Establishment of State agreements.

(1) Any State Historic Preservation Officer may enter into an agreement with the Council to substitute a State review process for the procedures set forth in these regulations, provided that:

(i) The State historic preservation program has been approved by the Secretary pursuant to section 101(b)(1) of the Act; and

(ii) The Council, after analysis of the State's review process and consideration of the views of Federal and State agencies, local governments, Indian tribes, and the public, determines that the State review process is at least as effective as, and no more burdensome than, the procedures set forth in these regulations in meeting the requirements of section 106.

(2) The Council, in analyzing a State's review process pursuant to s 800.7(a)(1)(ii), shall:

(i) Review relevant State laws, Executive orders, internal directives, standards, and guidelines;

(ii) Review the organization of the State's review process;

(iii) Solicit and consider the comments of Federal and State agencies, local governments, Indian tribes, and the public;

(iv) Review the results of program reviews carried out by the Secretary; and

(v) Review the record of State participation in the section 106 process.

(3) The Council will enter into an agreement with a State under this section only upon determining, at minimum, that the State has a demonstrated record of performance in the section 106 process and the capability to administer a comparable process at the State level.

(4) A State agreement shall be developed through consultation between the State Historic Preservation Officer and the Council and concurred in by the Secretary before submission to the Council for approval. The Council may invite affected Federal and State agencies, local governments, Indian tribes, and other interested persons to participate in this consultation. The agreement shall:

(i) Specify the historic preservation review process employed in the State, showing that this process is at least as effective as, and no more burdensome than, that set forth in these regulations;

(ii) Establish special provisions for participation of local governments or Indian tribes in the review of undertakings falling within their jurisdiction, when appropriate;

(iii) Establish procedures for public participation in the State review process;

(iv) Provide for Council review of actions taken under its terms, and for appeal of such actions to the Council; and

(v) Be certified by the Secretary as consistent with the Secretary's Standards and Guidelines for Archaeology and Historic Preservation.

(5) Upon concluding a State agreement, the Council shall publish notice of its execution in the Federal Register and make copies of the State agreement available to all Federal agencies.

(b) Review of undertakings when a State agreement is in effect.

(1) When a State agreement under s 800.7(a) is in effect, an Agency Official may elect to comply with the State review process in lieu of compliance with these regulations.

(2) At any time during review of an undertaking under a State agreement, an Agency Official may terminate such review and comply instead with ss 800.4 through 800.6 of these regulations.

(3) At any time during review of an undertaking under a State agreement, the Council may participate. Participants are encouraged to draw upon the Council's expertise as appropriate.

(c) Monitoring and termination of State agreements.

(1) The Council shall monitor activities carried out under State agreements, in coordination with the Secretary of the Interior's approval of State programs under section 101(b)(1) of the Act. The Council may request that the Secretary monitor such activities on its behalf.

(2) The Council may terminate a State agreement after consultation with the State Historic Preservation Officer and the Secretary.

(3) A State agreement may be terminated by the State Historic Preservation Officer.

(4) When a State agreement is terminated pursuant to s 800.7(c)(2) and (3), such termination shall have no effect on undertakings for which review under the agreement was complete or in progress at the time the termination occurred.

s 800.8 Documentation requirements.

(a) Finding of no adverse effect. The purpose of this documentation is to provide sufficient information to explain how the Agency Official reached the finding of no adverse effect. The required documentation is as follows:

(1) A description of the undertaking, including photographs, maps, and drawings, as necessary;

(2) A description of historic properties that may be affected by the undertaking;

- (3) A description of the efforts used to identify historic properties;
 - (4) A statement of how and why the criteria of adverse effect were found inapplicable; and
 - (5) The views of the State Historic Preservation Officer, affected local governments, Indian tribes, Federal agencies, and the public, if any were provided, as well as a description of the means employed to solicit those views.
- (b) Finding of adverse effect. The required documentation is as follows:
- (1) A description of the undertaking, including photographs, maps, and drawings, as necessary;
 - (2) A description of the efforts to identify historic properties;
 - (3) A description of the affected historic properties, using materials already compiled during the evaluation of significance, as appropriate; and
 - (4) A description of the undertaking's effects on historic properties.
- (c) Memorandum of Agreement. When a memorandum is submitted for review in accordance with s 800.6(a)(1), the documentation, in addition to that specified in s 800.8(b), shall also include a description and evaluation of any proposed mitigation measures or alternatives that were considered to deal with the undertaking's effects and a summary of the views of the State Historic Preservation Officer and any interested persons.
- (d) Requests for comment when there is no agreement. The purpose of this documentation is to provide the Council with sufficient information to make an independent review of the undertaking's effects on historic properties as the basis for informed and meaningful comments to the Agency Official. The required documentation is as follows:
- (1) A description of the undertaking, with photographs, maps, and drawings, as necessary;
 - (2) A description of the efforts to identify historic properties;
 - (3) A description of the affected historic properties, with information on the significant characteristics of each property;
 - (4) A description of the effects of the undertaking on historic properties and the basis for the determinations;
 - (5) A description and evaluation of any alternatives or mitigation measures that the Agency Official proposes for dealing with the undertaking's effects;
 - (6) A description of any alternatives or mitigation measures that were considered but not chosen and the reasons for their rejection;
 - (7) Documentation of consultation with the State Historic Preservation Officer regarding the identification and evaluation of historic properties, assessment of effect, and any consideration of alternatives or mitigation measures;
 - (8) A description of the Agency Official's efforts to obtain and consider the views of affected local governments, Indian tribes, and other interested persons;

(9) The planning and approval schedule for the undertaking; and

(10) Copies or summaries of any written views submitted to the Agency Official concerning the effects of the undertaking on historic properties and alternatives to reduce or avoid those effects.

s 800.9 Criteria of effect and adverse effect.

(a) An undertaking has an effect on a historic property when the undertaking may alter characteristics of the property that may qualify the property for inclusion in the National Register. For the purpose of determining effect, alteration to features of a property's location, setting, or use may be relevant depending on a property's significant characteristics and should be considered.

(b) An undertaking is considered to have an adverse effect when the effect on a historic property may diminish the integrity of the property's location, design, setting, materials, workmanship, feeling, or association. Adverse effects on historic properties include, but are not limited to:

(1) Physical destruction, damage, or alteration of all or part of the property;

(2) Isolation of the property from or alteration of the character of the property's setting when that character contributes to the property's qualification for the National Register;

(3) Introduction of visual, audible, or atmospheric elements that are out of character with the property or alter its setting;

(4) Neglect of a property resulting in its deterioration or destruction; and

(5) Transfer, lease, or sale of the property.

(c) Effects of an undertaking that would otherwise be found to be adverse may be considered as being not adverse for the purpose of these regulations:

(1) When the historic property is of value only for its potential contribution to archeological, historical, or architectural research, and when such value can be substantially preserved through the conduct of appropriate research, and such research is conducted in accordance with applicable professional standards and guidelines;

(2) When the undertaking is limited to the rehabilitation of buildings and structures and is conducted in a manner that preserves the historical and architectural value of affected historic property through conformance with the Secretary's "Standards for Rehabilitation and Guidelines for Rehabilitating Historic Buildings", or

(3) When the undertaking is limited to the transfer, lease, or sale of a historic property, and adequate restrictions or conditions are included to ensure preservation of the property's significant historic features.

s 800.10 Protecting National Historic Landmarks.

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 ss 800.4 through 800.6 and give special consideration to protecting National Historic Landmarks as follows:

- (a) Any consultation conducted under s 800.5(e) shall include the Council;
- (b) The Council may request the Secretary under section 213 of the Act to provide a report to the Council detailing the significance of the property, describing the effects of the undertaking on the property, and recommending measures to avoid, minimize, or mitigate adverse effects; and
- (c) The Council shall report its comments, including Memoranda of Agreement, to the President, the Congress, the Secretary, and the head of the agency responsible for the undertaking.

s 800.11 Properties discovered during implementation of an undertaking.

(a) Planning for discoveries. When the Agency Official's identification efforts in accordance with s 800.4 indicate that historic properties are likely to be discovered during implementation of an undertaking, the Agency Official is encouraged to develop a plan for the treatment of such properties if discovered and include this plan in any documentation prepared to comply with s 800.5.

(b) Federal agency responsibilities.

(1) When an Agency Official has completed the section 106 process and prepared a plan in accordance with s 800.11(a), the Agency Official shall satisfy the requirements of section 106 concerning properties discovered during implementation of an undertaking by following the plan.

(2) When an Agency Official has completed the section 106 process without preparing a plan in accordance with s 800.11(a) and finds after beginning to carry out the undertaking that the undertaking will affect a previously unidentified property that may be eligible for inclusion in the National Register, or affect a known historic property in an unanticipated manner, the Agency Official shall afford the Council an opportunity to comment by choosing one of the following courses of action:

(i) Comply with s 800.6;

(ii) Develop and implement actions that take into account the effects of the undertaking on the property to the extent feasible and the comments from the State Historic Preservation Officer and the Council pursuant to s 800.11(c); or

(iii) If the property is principally of archeological value and subject to the requirements of the Archeological and Historic Preservation Act, 16 U.S.C. 469(a)-(c), comply with that Act and implementing regulations instead of these regulations.

(3) Section 106 and these regulations do not require the Agency Official to stop work on the undertaking. However, depending on the nature of the property and the undertaking's apparent effects on it, the Agency Official should make reasonable efforts to avoid or minimize harm to the property until the requirements of this section are met.

(c) Council comments.

(1) When comments are requested pursuant to s 800.11(b)(2)(i), the Council will provide its comments in a time consistent with the Agency Official's schedule, regardless of longer time periods allowed by these regulations for Council review.

(2) When an Agency Official elects to comply with s 800.11(b)(2)(ii), the Agency Official shall notify the State Historic Preservation Officer and the Council at the earliest possible time, describe the actions proposed to

take effects into account, and request the Council's comments. The Council shall provide interim comments to the Agency Official within 48 hours of the request and final comments to the Agency Official within 30 days of the request.

(3) When an Agency Official complies with s 800.11(b)(2)(iii), the Agency Official shall provide the State Historic Preservation Officer an opportunity to comment on the work undertaken and provide the Council with a report on the work after it is undertaken.

(d) Other considerations.

(1) When a newly discovered property has not previously been included in or determined eligible for the National Register, the Agency Official may assume the property to be eligible for purposes of section 106.

(2) When a discovery occurs and compliance with this section is necessary on lands under the jurisdiction of an Indian tribe, the Agency Official shall consult with the Indian tribe during implementation of this section's requirements.

s 800.12 Emergency undertakings.

(a) When a Federal agency head proposes an emergency action and elects to waive historic preservation responsibilities in accordance with 36 CFR 78.3, the Agency Official may comply with the requirements of 36 CFR Part 78 in lieu of these regulations. An Agency Official should develop plans for taking historic properties into account during emergency operations. At the request of the Agency Official, the Council will assist in the development of such plans.

(b) When an Agency Official proposes an emergency undertaking as an essential and immediate response to a disaster declared by the President or the appropriate Governor, and s 800.12(a) does not apply, the Agency Official may satisfy section 106 by notifying the Council and the appropriate State Historic Preservation Officer of the emergency undertaking and affording them an opportunity to comment within seven days if the Agency Official considers that circumstances permit.

(c) For the purposes of activities assisted under Title I of the Housing and Community Development Act of 1974, as amended, s 800.12(b) also applies to an imminent threat to public health or safety as a result of natural disaster or emergency declared by a local government's chief executive officer or legislative body, provided that if the Council or the State Historic Preservation Officer objects, the Agency Official shall comply with ss 800.4 through 800.6.

(d) This section does not apply to undertakings that will not be implemented within 30 days after the disaster or emergency. Such undertakings shall be reviewed in accordance with ss 800.4 through 800.6.

s 800.13 Programmatic Agreements.

(a) Application. An Agency Official may elect to fulfill an agency's section 106 responsibilities for a particular program, a large or complex project, or a class of undertakings that would otherwise require numerous individual requests for comments through a Programmatic Agreement. Programmatic Agreements are appropriate for programs or projects:

(1) When effects on historic properties are similar and repetitive or are multi-State or national in scope;

(2) When effects on historic properties cannot be fully determined prior

to approval;

(3) When non-Federal parties are delegated major decision making responsibilities;

(4) That involve development of regional or land-management plans; or

(5) That involve routine management activities at Federal installations.

(b) Consultation process. The Council and the Agency Official shall consult to develop a Programmatic Agreement. When a particular State is affected, the appropriate State Historic Preservation Officer shall be a consulting party. When the agreement involves issues national in scope, the President of the National Conference of State Historic Preservation Officers or a designated representative shall be invited to be a consulting party by the Council. The Council and the Agency Official may agree to invite other Federal agencies or others to be consulting parties or to participate, as appropriate.

(c) Public involvement. The Council, with the assistance of the Agency Official, shall arrange for public notice and involvement appropriate to the subject matter and the scope of the program. Views from affected units of State and local government, Indian tribes, industries, and organizations will be invited.

(d) Execution of the Programmatic Agreement. After consideration of any comments received and reaching final agreement, the Council and the Agency Official shall execute the agreement. Other consulting parties may sign the Programmatic Agreement as appropriate.

(e) Effect of the Programmatic Agreement. An approved Programmatic Agreement satisfies the Agency's section 106 responsibilities for all individual undertakings carried out in accordance with the agreement until it expires or is terminated.

(f) Notice. The Council shall publish notice of an approved Programmatic Agreement in the Federal Register and make copies readily available to the public.

(g) Failure to carry out a Programmatic Agreement. If the terms of a Programmatic Agreement are not carried out or if such an agreement is terminated, the Agency Official shall comply with ss 800.4 through 800.6 with regard to individual undertakings covered by the agreement.

s 800.14 Coordination with other authorities.

To the extent feasible, Agency Officials, State Historic Preservation Officers, and the Council should encourage coordination of implementation of these regulations with the steps taken to satisfy other historic preservation and environmental authorities by:

(a) Integrating compliance with these regulations with the processes of environmental review carried out pursuant to the National Environmental Policy Act, and coordinating any studies needed to comply with these regulations with studies of related natural and social aspects;

(b) Designing determinations and agreements to satisfy the terms not only of section 106 and these regulations, but also of the requirements of such other historic preservation authorities as the Archeological and Historic Preservation Act, the Archeological Resources Protection Act, section 110 of the National Historic Preservation Act, and section 4(f) of the Department of Transportation Act, as applicable, so that a single document can be used for the purposes of all such authorities;

(c) Designing and executing studies, surveys, and other information-gathering activities for planning and undertaking so that the resulting information and data is adequate to meet the requirements of all applicable Federal historic preservation authorities; and

(d) Using established agency public involvement processes to elicit the views of the concerned public with regard to an undertaking and its effects on historic properties.

s 800.15 Counterpart regulations.

In consultation with the Council, agencies may develop counterpart regulations to carry out the section 106 process. When concurred in by the Council, such counterpart regulations shall stand in place of these regulations for the purposes of the agency's compliance with section 106.

ANALYSIS OF PROPOSED LEGISLATIVE RULES

Staff Counsel: Rita A. Pauley
Date: August 4, 1998
Agency: Division of Culture and History
Subject: Certified Local Government Program, 82 CSR 1

PERTINENT DATES

Filed for public comment: September 22, 1997
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Filed LRMRC: October 28, 1997
Filed as emergency: N/A

Fiscal Impact: N/A

ABSTRACT

The purpose of this rule is to establish the guidelines for the certification of local governments that wish to participate in the National Historic Preservation Program. Once certified, local governments may apply for matching funds through the State Historic Preservation Officer. Eligibility for funds is based on the National Register Programs Manual. Those requirements should be made part of the rule. The current rule has not been amended since 1985. It needs further revision to comply with the format requirements of the Secretary of State. Suggestions for format, style, clarity and language modifications have been noted on the rule provided to the agency.

The proposed rule amends a current rule. Primarily the changes proposed for this rule are technical clean-up to conform with language and stylistic changes that have occurred since the rule was last revised. The only substantive change to the rule was to allow the substitution of avocational experience for professional training for persons who wish to be members of historic landmark commissions.

AUTHORITY

Statutory authority: W.Va. Code, §29-1-8(d), which provides, in part, as follows:

(d) The director shall promulgate rules and regulations with the approval of the archives and history commission and in accordance with chapter twenty-nine-a of this code concerning: (1) The professional policies and functions of the historic preservation section; (2) the review of, and, when required, issuance of permits for, all undertakings permitted, funded, licensed or otherwise assisted, in whole or in part, by the state as indicated in subsection (a) of this section, in order to carry out the duties and responsibilities of the section; (3) the establishment and maintenance of a West Virginia state register of historic places, including the criteria for eligibility of buildings, structures, sites, districts and objects for the state register and procedures for nominations to the state register and protection of nominated and listed properties; (4) the review of historic structures in accordance with compliance alternatives and other provisions in any state fire regulation, and shall coordinate standards with the appropriate regulatory officials regarding their application; (5) review of historic structures in conjunction with existing state or local building codes, and shall coordinate standards with the appropriate regulatory officials for their application; and (6) such other rules and regulations as may be deemed necessary to effectuate the purposes of this article.

ANALYSIS

I. HAS THE AGENCY EXCEEDED THE SCOPE OF ITS STATUTORY AUTHORITY IN APPROVING THE PROPOSED LEGISLATIVE RULE?

No.

II. IS THE PROPOSED LEGISLATIVE RULE IN CONFORMITY WITH THE INTENT OF THE STATUTE WHICH THE RULE IS INTENDED TO IMPLEMENT, EXTEND, APPLY, INTERPRET OR MAKE SPECIFIC?

Yes.

III. DOES THE PROPOSED LEGISLATIVE RULE CONFLICT WITH OTHER CODE PROVISIONS OR WITH ANY OTHER RULE ADOPTED BY THE SAME OR A DIFFERENT AGENCY?

No.

IV. IS THE PROPOSED LEGISLATIVE RULE NECESSARY TO FULLY ACCOMPLISH THE OBJECTIVES OF THE STATUTE UNDER WHICH THE PROPOSED RULE WAS PROMULGATED?

Yes.

V. IS THE PROPOSED LEGISLATIVE RULE REASONABLE, ESPECIALLY AS IT AFFECTS THE CONVENIENCE OF THE GENERAL PUBLIC OR OF PERSONS AFFECTED BY IT?

Yes.

VI. CAN THE PROPOSED LEGISLATIVE RULE BE MADE LESS COMPLEX OR MORE READILY UNDERSTANDABLE BY THE GENERAL PUBLIC?

Yes. The rule could be made much more understandable and useable by clarifying some of the sentence structure and following the Secretary of State's format requirements.

VII. WAS THE PROPOSED LEGISLATIVE RULE PROMULGATED IN COMPLIANCE WITH THE REQUIREMENTS OF CHAPTER 29A, ARTICLE 3 AND WITH ANY REQUIREMENTS IMPOSED BY ANY OTHER PROVISION OF THE CODE?

No. The final agency approved rule does not have the authorization of the Chairman of the Archives and History Commission as required by WVC §29-1-5 (e)

VIII. OTHER.

Counsel has suggested technical modifications.



WEST VIRGINIA LEGISLATURE
Legislative Rule-Making Review Committee

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Senator Mike Ross, Co-Chairman
Delegate Mark Hunt, Co-Chairman
Debra A. Graham, Counsel

December 13, 1998

Joseph A. Altizer, Associate Counsel
Rita Pauley, Associate Counsel
Teri Anderson, Administrative Assistant

OFFICE OF THE
SECRETARY OF STATE

Dec 16 9 31 AM '98

FILED

NOTICE OF ACTION TAKEN BY LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

TO: Ken Hechler, Secretary of State, State Register

TO: Lora A. Lamarre
Division of Culture & History
Capitol Complex
Cultural Center

FROM: Legislative Rule-Making Review Committee

Proposed Rule: **Certified Local Government Programs, 82CSR1**

The Legislative Rule-Making Review Committee recommends that the West Virginia Legislature:

1. Authorize the agency to promulgate the Legislative Rule
(a) as originally filed
(b) as modified by the agency
2. Authorize the agency to promulgate part of the Legislative rule;
a statement of reasons for such recommendation is attached.
3. Authorize the agency to promulgate the Legislative rule with
certain amendments; amendments and a statement of reasons
for such recommendation is attached.
4. Authorize the agency to promulgate the Legislative rule as
modified with certain amendments; amendments and a
statement of reasons for such recommendation is attached.

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