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THE NATIONAL HISTORIC PRESERVATION
PROGRAM TODAY

PREPARED BY THE
ADVISORY COUNCIL ON HISTORIC PRESERVATION
AT THE REQUEST OF
HENRY M. JACKSON, *Chairman*
COMMITTEE ON INTERIOR AND
INSULAR AFFAIRS
UNITED STATES SENATE



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MEMORANDUM OF THE CHAIRMAN

To Members of the Senate Committee on Interior and Insular Affairs:

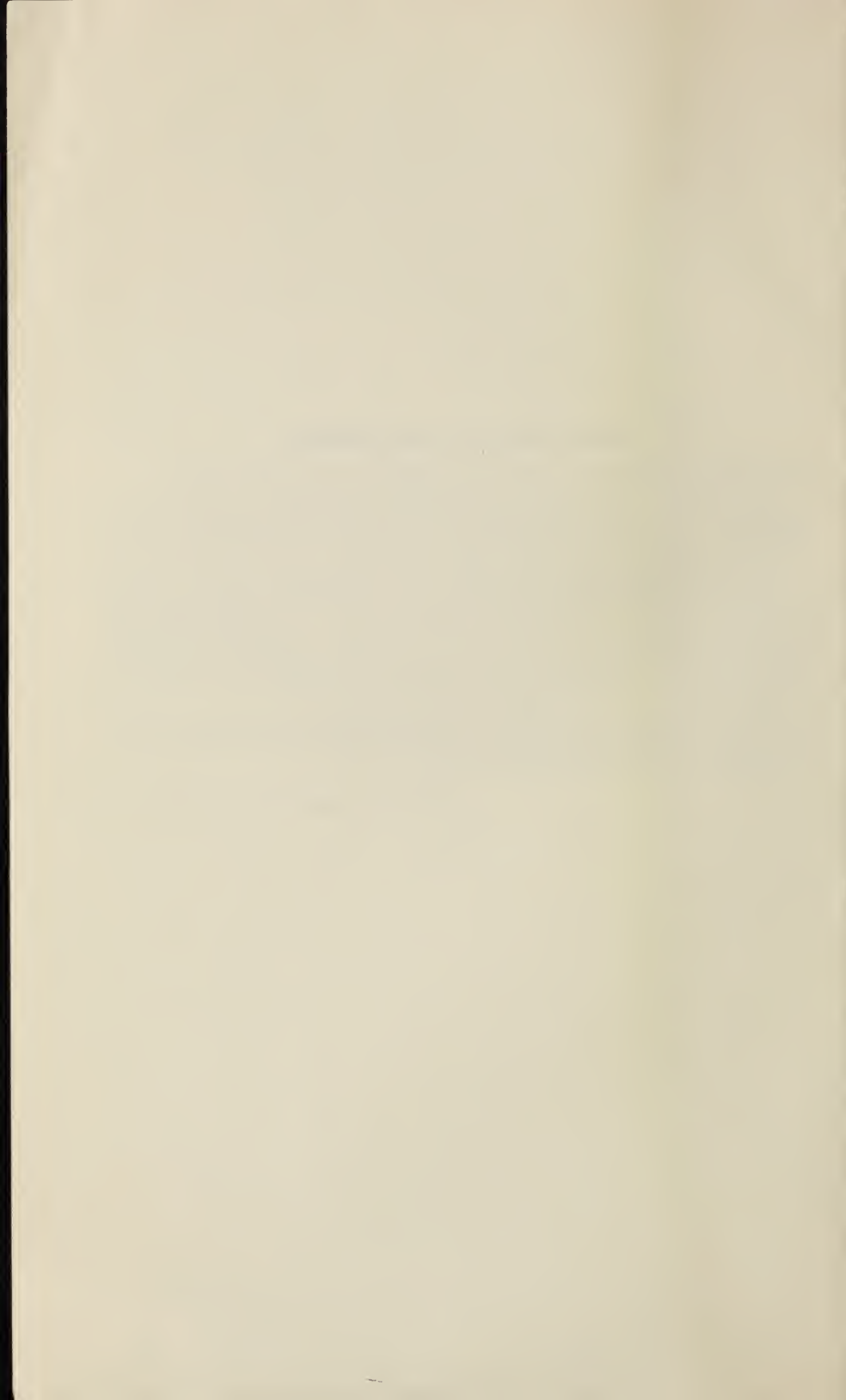
In February, 1975, I wrote the Chairman of the Advisory Council on Historic Preservation requesting the preparation of a report which would provide the Committee with an objective analysis of the present status of historic preservation in the United States.

The Council has responded to my request with their report on "The National Historic Preservation Program Today." I believe this is a significant document which merits careful study by those involved and concerned with the cause of historic preservation. It will be an invaluable aid to the Committee in developing new approaches to historic preservation.

We are deeply grateful to Dr. Clement M. Silvestro, Chairman of the Advisory Council, his colleagues on the Council and all those who contributed to this important report.

HENRY M. JACKSON, *Chairman.*

(III)



LETTER OF TRANSMITTAL

ADVISORY COUNCIL ON HISTORIC PRESERVATION,
Washington, D.C., October 3, 1975.

Hon. HENRY M. JACKSON,
Chairman, Committee on Interior and Insular Affairs,
U.S. Senate, Washington, D.C.

DEAR MR. CHAIRMAN: In my capacity as Chairman of the Advisory Council on Historic Preservation, it gives me great pleasure to transmit the Council's special report on the status of the national historic preservation program. Developed in response to your request, the report, "The National Historic Preservation Program Today," represents the fruition of an intensive effort by the 24 Council members and invited participants to survey the present national program and to identify current and future needs for the preservation of our national heritage.

To develop this report, the Advisory Council has drawn upon its experience of a decade in dealing with major preservation issues, as well as upon the expertise of preservation officials at both the State and National levels, and from both the public and the private sectors.

As you requested, this report is not a set of recommendations by the Advisory Council. Rather, it is a review of existing programs—their strengths and weaknesses—and a discussion of current problems and alternative approaches to solving these problems. It should be borne in mind that many of the conclusions in this report, particularly the analytical perception of the problems, derive to a considerable degree from the observations of national preservation leaders who have participated in the formulation of the report. These conclusions, for the most part, reflect the cumulative experience of their day-to-day involvement with preservation throughout the Nation. While the report should not be construed to express the absolute accord of all involved, it does reflect a consensus of the Council members as to the status and prospects of the Federal role in preservation today.

A list of all Council members and invited participants is enclosed. I would like to acknowledge the special contributions made by representatives of the Department of the Interior, (National Park Service), the Smithsonian Institution, the National Endowment for the Arts and Humanities, the National Trust for Historic Preservation and the National Conference of State Historic Preservation Officers to the preparation of this report.

Sincerely yours,

CLEMENT M. SILVESTRO,
Chairman.

[Enclosure.]

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Hon. Carlisle H. Humelsine, Chairman, National Trust for Historic Preservation.

INVITED PARTICIPANTS

Hon. Henry A. Kissinger, Secretary of State.
Hon. Russell Peterson, Chairman, Council on Environmental Quality.
Hon. Nancy Hanks, Chairman, National Endowment for the Arts.
Hon. Ronald S. Berman, Director, National Endowment for the Humanities.
Miss Kathleen Ryan, Assistant Director, Domestic Council.
Mr. Robert R. Garvey, Jr., executive director, Advisory Council on Historic Preservation.

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THE NATIONAL HISTORIC PRESERVATION PROGRAM TODAY

INTRODUCTION

As America enters its Bicentennial year, the moment is right to look to the future of the national historic preservation program. While more tangible national needs, such as the need to conserve energy, attract greater public concern, the most vital energy resource for this country is its sense of purpose. That sense of purpose, of national identity and destiny, is nourished by symbols from our past, reminders of our unique experiences and goals. The conservation of those symbols, and their integration into our daily lives, is a vital national interest . . . never more so than in periods of crisis and rapid change. As Americans rededicate themselves to the Nation's founding ideals, it is appropriate that they include historic preservation on the agenda for the Bicentennial.

The historic preservation movement is ready for a significant advance. The National Historic Preservation Act, in the decade since its enactment, has produced a stronger, more dynamic program. The potential of Federal protection has been extended to thousands of historic sites, and the number of properties saved and restored has increased dramatically.

At a period when accelerated destruction of historic resources demanded immediate action, the 1966 act both reaffirmed and strengthened the National Government's commitment to historic preservation. The act expanded the National Register of Historic Places as an enlargement of the concept in the 1935 National Historic Sites Act which was the basis for the national historic landmarks program. It also provided for a preservation matching grants program, and created the Advisory Council on Historic Preservation to encourage preservation activity and to monitor Federal undertakings affecting historic resources.

Most importantly, the 1966 act inspired both State and local governments and the private sector, the constituencies which had initially pressed for such legislation. The act became a powerful impetus for State, local, and private funding commitments which now far exceed the Federal matching commitment for historic preservation.

Nonetheless, increased funding and the degree of Federal protection to historic properties afforded for the first time by the 1966 act has not halted entirely the destruction and disfiguration of valuable landmarks. State historical agencies, local groups, and private organizations have—under the protective provisions of Section 106 of the act—kept a watchful eye on Federal action potentially harmful to historic resources. Yet significant losses continue.

Louis Sullivan's old Chicago Stock Exchange, one of the world's first skyscrapers, came down in 1971. The century-old Queen City Hotel in Cumberland, Md., an elegant and nationally important survivor from the heyday of American railroading, was destroyed in 1972. New York's monumental Grand Central Station, along with

America's last major pre-Civil War railroad industrial complex in Savannah, Ga., are now in grave danger. And as an ironic footnote to our current enthusiasm for the Bicentennial, the Virginia plantation home of Francis Lightfoot Lee, a signer of the Declaration of Independence, has collapsed from sheer neglect within the last 4 years, despite having been designated a national historic landmark.

The continuing loss of such major monuments is paralleled by the destruction of lesser sites. Unnumbered Victorian villas, Greek Revival townhouses, gingerbread-trimmed Railroad depots, cupolaed civic buildings, modest rowhouses, 18th- and 19th-century farm complexes, and early industrial sites continue to vanish from the face of our land as we approach 1976. White County, Tenn., loses its finest early residence to an Appalachian corridor highway. Stone farmhouses in the Delaware Valley are about to be inundated by a proposed new dam, although a last-minute survey reveals that they predate the Revolution. Even within the shadow of the White House, dignified brick dwellings that have graced Washington streets since the days of Andrew Jackson still fall victim to the wrecking ball. Urban renewal of the 1950's and 1960's resulted in the demolition and clearance of entire neighborhoods recognized as being rich in historic properties. Such resources as the New Bedford, Mass., waterfront dating from the whaling era are now lost forever. Perhaps most tragic of all, countless archeological sites that might yield new insights into our past are inadvertently destroyed every year simply for lack of an adequate archeological inventory.

In summary, while distinguished monuments like Robert Mills' Ainsley Hall House in South Carolina and San Francisco's Old Mint—and indeed whole neighborhoods like Baltimore's Federal Hill and Chicago's Pullman District—have been saved as a result of Federal initiative since 1966; other equally notable places have been wiped out or face dim prospects for survival.

Clearly, the situation demands more vigorous action. Goals articulated in 1966 still remain unrealized. For these, legislative authority already exists; it is implementation that is needed now. In part, it is the purpose of this report to identify these unfulfilled goals, then to suggest alternative means for achieving them.

At the same time, the report calls attention to new challenges and opportunities which have arisen since 1966 and which should be addressed through decisive action at the highest level of Government. These actions should be based on careful consideration and understanding of new developments.

Since 1966, for instance, the idea of historic preservation as an isolated activity limited to showplace private restorations or the restoration and maintenance of historic-house museums has increasingly given way to a broader view of preservation as a facet of the entire environmental movement. Broadening of the concept of preservation was accelerated in 1970 by enactment of the National Environmental Policy Act (Public Law 91-190) and the establishment of the Council on Environmental Quality and the Environmental Protection Agency. Historic preservationists have become more aware of the natural environment as it interplays with the historic environment. Conversely, conservationists have become more aware of the contribution made to our daily lives by the man-built environment. People are beginning to see, as James Biddle, president of the National Trust,

has pointed out, that "the disfiguration of cities—the neglect or destruction of beautiful old buildings—impairs the total environment as much as the pollution of air and water or the thoughtless extermination of wildlife."

Since 1966, as well, there has been a growing emphasis placed upon the Federal Government's leadership role in preservation. Whereas the National Historic Preservation Act called upon the Government to encourage and assist private, State, and local preservation efforts, Executive Order 11593 stated, in 1971, that the Federal Government "shall provide leadership in preserving, restoring, and maintaining the historic and cultural environment of the Nation." The increasing influence of the National Foundation on the Arts and the Humanities, established in 1965, further reflects this trend, providing, as it does, the impetus for a wide variety of cultural projects.

The continued public-private partnership between the National Trust for Historic Preservation and the National Government reflects the vigor and positive results of Federal initiative in preservation. Federal funding assistance to the Trust over the past several years has helped to expand a many-faceted educational program, a growing network of field service offices, and a dynamic publications program which addresses numerous aspects of preservation today.

The proliferation of history and preservation groups in towns and cities throughout America—from less than 2,500 in 1966 to more than 6,000 in 1975, also evidences the public conviction about the importance of historic preservation. The American Government reflected this upsurge of popular interest when, in 1973, it became the first government to ratify the World Heritage Convention. Adopted by the UNESCO General Conference of November 1972, the Convention affirms that it is the "duty" of each national government to preserve and conserve the cultural resources that collectively are the heritage of all mankind.

Again, since 1966, a portentous shift has occurred from an accent on the preservation of single monumental properties of national significance to concern for the preservation of humbler properties as well—those sites that reflect the ordinary life of America. A restoration project is today as likely to be a 1915 vaudeville theater as a colonial mansion. By the same token, the protection of entire districts of older buildings is now emphasized—buildings that in themselves may be undistinguished, but which together enhance and add dimension to the community environment. No longer does the term "historic district" necessarily mean cobblestones, arching oaks, and serene federal-period houses. It may now also designate a working class area of rehabilitated houses and corner bars that reflect both an epoch of local history and an ethnic or cultural strain that has figured prominently in community development. The preservation program spearheaded by the Pittsburgh (Pa.) History and Landmarks Foundation has been particularly successful in this regard, assisting neighborhoods to achieve new vitality without losing old identities.

More and more communities are also recognizing the potential offered by saving old buildings through new uses. The pragmatic value of preservation as a force in the revitalization of downtown commercial districts and older, in-town residential areas has been bolstered more recently by a growing awareness that preservation can mean savings in energy and raw materials. Bold new examples indicate what

can be done with older buildings: the renovation of a thick-walled Minneapolis warehouse to accommodate light and pleasant offices at less than the cost of a new building; the conversion of early 19th century commercial buildings on Boston's waterfront into spacious contemporary apartments behind a prim granite New England facade. These factors now loom as importantly as recreation and tourism among economic arguments for preservation.

In response to these developments this report will attempt to show:

- What issues must be addressed as the Bicentennial begins, and in the years beyond 1976;
 - What preservation objectives the Federal Government should set for itself;
 - Finally, what alternatives are available for reaching the objectives.
- The report distinguishes four basic areas which compose the foundation of a strong national preservation program. These are:
- The identification of all existing historic resources;
 - The evaluation and registration of resources once they have been initially identified;
 - The protection of historic resources;
 - The preservation and enhancement of historic resources.

Each of these areas is discussed in turn, concluding with a review of the organizational requirements needed to strengthen activities in the areas.

Each section of the report opens with a prefatory statement of objectives which, in the opinion of the Advisory Council, must be achieved in order to attain the goal of an adequate national preservation program. For purposes of analysis, the four elements of identification, evaluation and registration, protection, and preservation and enhancement are treated separately, although in practice rigid distinction is not always possible.

To develop this report, the Advisory Council has drawn upon its experience of a decade in dealing with major preservation issues, as well as upon the expertise of preservation officials at both the State and National levels, and from both the public and private sectors.

Over the last 10 years, the volume of published materials relating to historic preservation has proliferated at a startling rate. Consequently, for most factual material in the report, the Advisory Council has relied upon existing sources rather than upon original research. In addition to published materials, information has also been gleaned from memoranda and other unpublished documents contained in the files of the Advisory Council.

It should be borne in mind, however, that many of the conclusions contained in this report—particularly the analytical perception of existing problems—derive to a considerable degree from the unwritten observations of national preservation leaders who have participated in formulation of the report. These conclusions, for the most part, reflect the cumulative experience of their day-to-day involvement with preservation throughout the Nation. While the report should not be construed to express the absolute accord of all involved, it does reflect a consensus of viewpoint at the highest level as to the status and prospects of the Federal role in preservation today.

CHAPTER I.—A LEGISLATIVE PERSPECTIVE

The national historic preservation program is ready for another major step forward. Since the beginning of this century it has progressed rapidly, in thought and action, to the point where the national effort must be organized to achieve maximum productivity. While this report examines the successes of the national program, it also identifies specific shortcomings in the preservation program—inadequacy of laws and funding, needs for expertise, fragmentation of programs, and the like—that serve as obstacles to effective action.

The inadequacies of the preservation program arise, to a large extent, from the very substantial progress the preservation movement has achieved. Beginning with the protection of landmarks as isolated “monuments” to a time or a personality, the program has evolved toward realization that historic resources are an essential component of the human environment. The result is impressive in the growth and variety of private, local, State, and National activities. But since 1966 the program has never had the benefit of an attempt to look at how all segments of the preservation field relate—or how they should relate. Legislation has generally advanced in response to the perceived shortcomings of the preceding legislation. A survey of the history of this legislation will lend perspective to the assessment of present needs.

GENERAL PRESERVATION LEGISLATION

Antiquities Act

Although the Federal Government had engaged in historic preservation activities as early as the 1880's, it was not until the beginning of this century that Congress enacted the Nation's first comprehensive preservation legislation. This was the Antiquities Act of 1906. Intended to stem the destruction of prehistoric sites and artifacts in the West, the Antiquities Act established a system for protecting such resources located on Federal lands. The act authorizes the President to designate as national monuments historic and prehistoric landmarks in Federal ownership. Limited in practice to properties possessing historical significance to the Nation as a whole, 82 national monuments have been designated, some of which form the nucleus of present national parks. Specific protection for archeological sites situated on Federal lands is also afforded by the act. Permits for archeological research and excavation are required, and criminal penalties discourage illegal excavation and vandalism.

National Park Service

Ten years after the passage of the Antiquities Act, Congress authorized the creation of the National Park Service, entrusting it with the care and protection of historical as well as natural parks. Since 1916, the National Park Service, an agency of the Department of the Interior, has been the primary focus for Federal preservation efforts. Besides the management of many prominent historic properties, the National Park Service has initiated a number of programs

affecting non-Federal preservation efforts, and has contributed significantly to the advancement of preservation technology and philosophy in the United States.

Historic Sites Act

After 1916, the need for further Federal preservation activities became increasingly evident. In 1935, Congress extended the authority of the National Park Service for preservation activities beyond the care and interpretation of federally owned properties. The Historic Sites Act of 1935 declared for the first time a national policy of historic preservation and authorized the Secretary of the Interior to initiate a number of preservation programs. These programs serve as the foundation of the present Federal program. Under the auspices of the National Park Service, the National Survey of Historic Sites and Buildings began in 1937 with the goal of identifying and evaluating those nationally significant historic properties which reflect major themes of American history. As an outgrowth of this effort, the Registry of National Historic Landmarks was created in 1960 to formally recognize those properties that possess exceptional value for commemorating or illustrating American history. Through the landmarks program, the Secretary of the Interior may officially designate properties of national significance as official "National Historic Landmarks," although no protection was afforded such properties until 1966. By the end of 1974, over 6,000 properties had been surveyed and some 1,200 designated as National Historic Landmarks.

Other preservation activities have been undertaken by the National Park Service and the Department of the Interior under authority of the Historic Sites Act. The Historic American Buildings Survey and the Historic American Engineering Record have been created to document historic structures, through photographs and measured drawings. The 1935 act also authorized the Secretary of the Interior to acquire historic properties, including preservation easements, and to enter into cooperative agreements with State and local governments, organizations, and individuals to preserve nationally significant historic properties. Easements have been used to protect the environs of such properties as the Antietam Battlefield and Mount Vernon, while cooperative agreements extend Federal protection and assistance to properties as diverse as Jamestown in Virginia and Chimney Rock on the Old Oregon Trail. The common element in each case is that the property must be of national significance, a requirement that applies to all activities carried out under the Historic Sites Act.

National Historic Preservation Act

Although the 1935 act provided effective tools to deal with nationally significant properties, it proved inadequate to deal with the broader range of historic properties that did not meet the act's standards for preservation. In 1966, Congress acted to overcome the deficiencies of existing legislation and to reflect the changes that had occurred in preservation philosophy since 1935. The resulting National Historic Preservation Act of 1966 was an important step forward. It expanded the Federal Government's concern for historic resources to include those of State and local significance and firmly established partnership relationship between the Federal Government and the States in the preservation field.

The 1966 Act directed the Secretary of the Interior to maintain an expanded listing of buildings, sites, districts, structures, and objects significant at the National, State, or local level in terms of history, architecture, archeology, and culture. This listing, known as the National Register of Historic Places, serves as the basic catalog of historic properties in the United States. Though at present only about 20 percent complete, the register already contains about 12,000 individual entries.

No longer was the Federal Government's interest limited to nationally significant properties. The National Historic Preservation Act offered for the first time Federal funding assistance to develop State historic preservation plans, to identify properties of State and local significance potentially eligible for National Register listing, and to maintain and restore properties listed in the National Register. This grants-in-aid program is administered by the National Park Service, with funds being apportioned to the States on a 50-50 matching basis. From an initial authorization of \$2 million in 1967, the grants-in-aid program has grown to \$24,400,000 in 1975.

In order to protect this Federal investment in preservation and regulate to some degree the impact of Federal and federally aided projects on recognized historic properties, the 1966 Act set up a mandatory project review mechanism. It established the Advisory Council on Historic Preservation, an interdepartmental body with 10 ex officio members, including 7 Cabinet-level Federal officials, and 10 members appointed by the President from outside the Federal Government, to administer this review procedure. Accordingly, section 106 of the act requires that, prior to the approval of any Federal, federally assisted, or federally licensed project which may affect a National Register property, the head of the Federal agency must afford the Advisory Council a reasonable opportunity to comment. The agency must then consider the Council's comments and the project's effect on National Register properties before reaching a final decision on the project. The Advisory Council is also charged with generally advising the President and Congress on historic preservation matters and coordinating the activities of the Federal Government relating to historic preservation.

Executive Order 11593

Although lacking the legal stature of legislation, an important Presidential directive provides further guidance for Federal agencies as their programs relate to historic preservation. Issued on May 13, 1971, Executive Order 11593, Preservation and Enhancement of the Cultural Environment, directs Federal agencies to adopt measures for the identification and nomination of properties in their ownership which may be eligible for National Register listing. The order also directs the agencies to maintain National Register properties at professionally determined standards, to develop internal procedures for preservation, and to give consideration in project planning to properties which *may* be eligible for the National Register although they are not yet formally listed. Coordination of Federal survey and property management activities has been entrusted to the Secretary of the Interior, acting through the National Park Service, while the project review process itself is administered by the Advisory Council in a manner similar to the section 106 review of the National Historic

Preservation Act. Although the Executive order has not yet been fully implemented, the Federal Government has made substantial progress in the incorporation of historic preservation values into the decisionmaking process.

National Environmental Policy Act

A related environmental statute stimulated historic preservation consciousness in the Federal Government. The National Environmental Policy Act of 1969, NEPA, requires Federal agencies to consider environmental values in the development of programs and projects, and defines these environmental factors to include important historic, cultural, and natural aspects of our national heritage. Since enactment of this law, most Federal agencies have developed internal procedures to identify environmental effects of actions they proposed to initiate or assist.

Each agency prepares detailed environmental analyses for its projects so that the projected benefits may be weighed against the cost to the environment. Since NEPA's passage, Federal agencies have become increasingly sensitive to the effect of their actions on historic resources, recognizing this as an important environmental impact that must be carefully measured before a Federal commitment is given to a major project.

ARCHEOLOGICAL LEGISLATION

While the preceding laws deal with historic properties in general, Congress has enacted two additional measures that specifically deal with the protection of archeological resources. Archeological resources present unique preservation problems, since recovery of the scientific information, which is the primary value of an archeological site, effectively destroys the fabric of the resource and the site's potential for yielding further information. Moreover, unlike historic properties, archeological sites frequently lie undiscovered until they are disturbed by a construction project. The Reservoir Salvage Act of 1960 and the Archeological and Historical Preservation Act of 1974 provide a means of evaluating threatened sites and recovering the information that the site may contain.

Reservoir Salvage Act

The Reservoir Salvage Act of 1960 directs the head of any Federal agency engaging in or licensing dam construction to notify the Secretary of the Interior upon discovery of any significant archeological resources that are likely to be lost. In such cases, the Secretary is authorized to undertake salvage operations at the threatened sites.

Archeological and Historical Preservation Act

The 1974 Archeological and Historical Preservation Act expanded the Reservoir Salvage Act by extending the notification requirement to all Federal, federally assisted, and federally licensed projects that might cause the loss of significant historical or archeological data. Up to 1 percent of the total Federal project cost was authorized for recovery of archeological data in such cases, while the act gave the Secretary of the Interior increased funding to carry out additional salvage activities. The 1974 act also charged the Secretary of the Interior with coordinating Federal archeological salvage activities associated with Federal and federally aided projects.

OTHER PRESERVATION LAWS

The laws mentioned above outline the national historic preservation program as it applies to all Federal agencies. Several other important measures created specific preservation requirements for some Federal agencies and established the National Trust for Historic Preservation to coordinate preservation efforts in the private sector.

Department of Transportation Act of 1966

The Department of Transportation has a unique responsibility imposed by section 4(f) of its authorizing legislation, to consider historic properties and other environmental factors in transportation project planning. Under the provisions of section 4(f), the Secretary of Transportation shall not approve a transportation project that requires the use of land from any officially designated historic property unless he has determined that no other feasible or prudent alternative exists. Judicial interpretation of the feasible or prudent requirement has made section 4(f) a significantly effective tool in protecting designated historic resources.

Federal Property and Administrative Services Act

The General Services Administration, GSA, in its capacity as the Government's real property manager, annually transfers a number of historically significant properties from Federal to non-Federal ownership under the Federal Property and Administrative Services Act of 1949. This statute authorized GSA to transfer nationally significant historic properties to State and local governments at no cost, if the property will be preserved as a monument, in other words for nonprofit museum purposes. In 1972, however, the act was amended to permit the transfer of any surplus federally owned historic properties for profit-generating activities. The result has been an increased number of historic properties at all levels of significance, surplus to the Government's needs, being productively reused by States and localities in a manner consistent with their historical integrity.

National Trust for Historic Preservation Act of 1949

Although national preservation legislation has largely confined itself to those activities of the Federal Government which affect historic properties, the single law dealing exclusively with private preservation efforts is important. In 1949 Congress established the National Trust for Historic Preservation to facilitate public participation in the preservation of sites, buildings, and objects of national significance or interest. A nonprofit corporation chartered by the Congress for charitable and educational purposes, the National Trust manages a number of historic properties, conducts educational and publications programs on historic preservation, administers a grants-in-aid program, and provides extensive professional services to public and private preservation groups and individuals. With a current membership of more than 75,000, the National Trust provides a unique bridge from the Federal Government to the private sector and serves a growing constituency of preservationists. The National Historic Preservation Act of 1966 authorized the Secretary of the Interior to establish a program of 50-50 matching Federal grants-in-aid to the National Trust for the purpose of assisting it in carrying out its historic preservation responsibilities.

SUMMARY

The development of the national historic preservation program reflects a willingness to learn from experience and to expand horizons. But the program is not free of shortcomings and difficulties, and the opportunity is now present to coordinate the varied and growing preservation activities into a coherent national effort. As the following chapters will show, much remains to be done to preserve and enrich the historical dimension of our environment.

CHAPTER II.—IDENTIFYING HISTORIC PROPERTIES

The prerequisite for an effective preservation program is the discovery and identification of the numerous historic resources that comprise the Nation's heritage. This basic step must be taken to insure that no historic properties are inadvertently damaged or destroyed and to provide the foundation for a comprehensive registration process. It designates properties which meet certain minimum standards of historical value and thus warrant further evaluation of their significance, their rarity, and their integrity to determine each property's place in the national preservation program. In addition, identification of historic properties insures their consideration in public and private project planning.

- To be effective, any process for identifying historic properties must:
- develop an initial comprehensive national inventory, as part of the total evaluation and registration system, identifying publicly owned and privately owned historic properties.
 - involve local communities, organizations, and individuals in gathering information.
 - employ the guidance of qualified professionals and adhere to accepted professional standards and criteria.
 - require that potentially affected historic properties be identified during the planning of public projects and programs.

Measured against these standards, the existing national historic preservation program presents certain problems and shortcomings.

PRESENT EFFORTS TO IDENTIFY HISTORIC PROPERTIES

A number of programs are currently operating to identify historic properties. The National Survey of Historic Buildings and Sites commenced in 1937, was suspended in 1941 and not reinstated until 1957. In that time, though, the National Survey has inventoried over 6,000 properties, 1,254 of which have been designated by the Secretary of the Interior as National Historic Landmarks. It is estimated that the National Survey is about one-quarter complete. The National Survey, however, does not constitute a comprehensive national inventory. It was designed to meet the Historic Sites Act directive to identify properties of exceptional value for commemorating nationally significant places, persons, and events. In operation, the National Survey has adhered closely to that directive.

Since 1966, the National Register program has expanded the identification activities of the national preservation program to include properties of State and local significance. Operating through a national network of State officials, known as State Historic Preservation Officers, the National Park Service funds statewide survey efforts to identify properties that the States will then nominate to the National Register. Only one of the 55 States and territories eligible to participate in the program has failed to do so.

Using the National Register's Criteria for Evaluation as a guide, the States have nominated over 12,000 properties to the National Register. However, this number represents only those properties that have been evaluated for National Register entry. The number of properties actually identified by the States as possessing some degree of historical value, but not yet given the extensive evaluation necessary for entry in the National Register, is far greater. The National Park Service estimates that over 233,500 properties have been identified in State inventories as being of some historic significance. Even these inventories are incomplete; the National Park Service estimates that only 35% of the Nation's historic properties have so far been included. This means that about 670,000 properties would eventually be included in a comprehensive national inventory.

While the National Register program has made a significant contribution to the identification of historic properties, particularly through the funding and stimulation of State survey efforts, the National Register itself does not at the present time provide an initial comprehensive inventory of historic properties.

One stimulus to the National Register program has been the particular requirements that apply to Federal agencies. Executive Order 11593 requires Federal agencies to locate, inventory and nominate historic properties under their jurisdiction and control to the National Register. The requirement has been partially effective. Fifty-five agencies have designated representatives to coordinate their preservation efforts with the National Park Service and its administration of the National Register program. Twenty-five of these agencies are conducting substantial identification programs, while the remainder vary in quality from poor to nonexistent. The General Services Administration has been particularly diligent in its efforts, having 105 properties entered in the National Register, but few other agencies have devoted sufficient staff or funds to do a comparable job. In fairness, it should be noted that the obstacles confronting a massive land holding agency such as the Bureau of Land Management, which administers over 470 million acres of public land and the Outer Continental Shelf, are overwhelming. But such obstacles cannot be accepted as reasons to ignore the responsibility altogether, as a number of Federal agencies have.

Another aspect of Federal preservation responsibilities has stimulated survey activities. Implementation of Executive Order 11593 and the National Environmental Policy Act has created an imprecisely defined duty in Federal agencies to identify historic properties during the planning of a project that may affect them. Under the Executive order this obligation is clear where the project is on Federal land, and, for projects on non-Federal land, the Advisory Council has requested agencies to similarly identify properties that may be eligible for the National Register. The National Environmental Policy Act is less clear, although it has spurred many agencies to adopt internal procedures requiring the identification during project planning of properties eligible for the National Register. Some, such as the Environmental Protection Agency and the Economic Development Administration, require intensive surveys in areas likely to be disrupted during construction. However, the extent of actual survey activities to be carried out and the authority to use project funds for such surveys remains an unresolved question with many agencies. This has ham-

pered the success of Federal efforts to identify historic properties during project planning.

While the National Register program has stimulated the development of State inventories of historic properties, it would be unfair to imply that such non-Federal efforts to identify historic properties are the result only of Federal stimulus. State and local government efforts date back to 1940, when Charleston, South Carolina, initiated its survey. Existing programs vary greatly in scope, effectiveness, and completeness. Only 10 States are conducting surveys on a comprehensive, scheduled basis, while the remaining 43 programs are conducted without a definite plan. The National Park Service, which funds State plans and oversees much of the States' efforts, rates 14 survey programs as employing sufficient expertise in the necessary professional categories. The remainder require additional staff capability in history, architecture, or archeology.

Local governmental survey activities reflect the same variations in quality. Cambridge, Mass., may be considered a model effort, where every building has been surveyed, documented, and evaluated for historical or architectural significance. Charleston, S.C., Newport, R.I., and Mobile, Ala. also have undertaken commendable survey efforts. Unfortunately, few other localities approach this level of excellence, although much valuable information on historic properties exists in a large number of American communities.

A major shortcoming has been the lack of coordination of local survey efforts with State surveys and the National Register program. It is estimated that only one-third of the ongoing local surveys are properly in phase with the Federal-State program. With effective coordination between the various levels of official survey efforts, existing information from the local level could be integrated into a comprehensive national inventory. With the advent of the Housing and Community Development Act of 1974, and its stimulus for additional local efforts to identify historic properties as part of a city's community development program, the opportunities for local surveys to contribute to an expanded national program of identifying historic properties are greatly multiplied but so are the problems that arise from inadequate coordination and poor quality execution.

In the private sector, there is no comprehensive nationwide program devoted to identifying historic properties. An isolated example of a national, nongovernmental survey program is the excellent work being done by the American Society of Civil Engineers to identify important engineering landmarks. At the State level, nonprofit historical societies and similar groups have undertaken surveys, such as the Bishop Museum survey of Hawaiian archeological resources. These are exceptions, though. Only at the local level does there exist a number of excellent private surveys. Notable examples include the work of the Junior League in San Francisco and in Milwaukee's Walker's Point and the work of Historic Annapolis, Inc. Private surveys, particularly at the local level, have proven themselves to be valuable complements for government sponsored programs to identify historic resources and deserve incorporation into any comprehensive national inventory effort.

Review of the existing national program for identifying historic properties confirms the value of present efforts, notably the National

Survey, the National Register program, and a number of commendable non-Federal surveys and inventories. However, it is equally clear that these programs are far from complete. Based on the information it has gathered on Federal, State and local programs, the Advisory Council estimates that only about one-quarter of the Nation's extant historic properties have been identified adequately for the purposes of an effective national historic preservation program. Furthermore, the basic structure of the national historic preservation program is not adequately directed at fulfilling the four objectives articulated at the beginning of this section. The Advisory Council believes that the following problems require attention if the program is adequate to identify the Nation's historic properties.

There is no comprehensive national inventory of historic properties

Present Federal programs to identify historic properties are not directed at the compilation of a basic inventory list. Existing programs perform valuable services in evaluating the nature and level of significance of an historic property and then classifying that property in a carefully developed registration system. However, these programs are too far from completion to provide accurate information on all the Nation's historic properties within the near future. Because the evaluation and registration functions are combined with the preliminary identification work, the present system will require a considerable amount of time to approach a level of completion that is useful for project planners and preservation planners alike.

While the role of evaluation and registration should not be underemphasized, as indeed it is, the ultimate goal and refinement of a comprehensive system of identifying historic properties, those processes can be separated from initial identification of potentially valuable properties. Identification of historic properties, in the form of a basic inventory, can then be completed relatively quickly and with a substantially smaller commitment of Government funds. Once inventoried, an historic property is then flagged for further consideration should its existence be threatened or for later, more intensive evaluation of its historic significance.

The difficulties caused by the lack of a comprehensive inventory are painfully visible. During the height of the urban renewal program in the 1950's and 1960's, entire neighborhoods, now recognized as rich in historic properties, disappeared. This tragedy did not arise from the malice of urban renewal officials, but from the lack of any knowledge of the resources that were being destroyed. Boston, Pittsburgh, Washington, Chicago, St. Louis, Denver, Seattle, and Oakland all bear mute witness to this process. A recent case before the Advisory Council serves as an excellent example of the need for a basic national inventory. After 5 years of planning for the Appalachian corridor highway, preservationists finally moved into action when the Jesse Lincoln House in Sparta, Tenn., was threatened with demolition. Belatedly listed on the National Register and recognized as the most outstanding antebellum residence in the area, the house was nevertheless, destroyed, after consultation with the Advisory Council revealed that it was too late to choose an alternative alignment for the highway. The irony of the case is that project officials said had they been given any indication of the historical value of the Jesse Lincoln House at an earlier stage of planning, they would have been

willing and able to redesign the highway to preserve the building. The Advisory Council's project review role brings it into repeated contact with such unfortunate cases.

There are a number of ways that a comprehensive national inventory could be completed in a reasonably short time as part of the existing National Register program.

Using the existing Federal-State program being carried out under the National Historic Preservation Act, an intensified effort could concentrate on initial identification of the Nation's historic properties. This approach would rely on non-Federal personnel surveying non-Federal lands while leaving the responsibility for Federal lands to the agencies that administer them. A target date for completion could be set, taking into account the funding available for such a concentrated effort. While an early target date may appear more expensive in the short run, these costs may well be offset by savings in project delays and losses of properties that now occur for lack of information.

Additional funding would be necessary to complete a national inventory in the near future and to avoid diverting funds from other aspects of the national preservation program. The amount of funding necessary is not entirely certain. Based on its experience funding State surveys since 1967, the National Park Service estimates that it would cost about \$80 million to complete a national inventory on non-Federal land. To round out this inventory with historic properties located on Federal lands may require another \$30 million. This is based on estimates such as that from the Forest Service, projecting a cost of \$9.4 million to inventory approximately 90,000 properties, the bulk of which are archeological sites. A complete national inventory of historic properties, which would number around 670,000 properties, would cost about \$110 million. Based on current matching formulas under the 1966 act, this would require a \$40 million commitment from the States. Since the benefits of a national inventory flow to the Nation as a whole and are of particular relevance in Federal and federally assisted project planning, it may be appropriate to provide a greater than 50 percent share of Federal funding for State survey efforts.

An alternative means of completing the national inventory would be to completely federalize the project. Allowing State survey efforts to continue at their present rate with their orientation toward National Register nominations, a concerted, 100 percent federally funded and federally executed inventory program administered by the National Park Service could be undertaken. Cost estimates would not vary substantially from the previous alternative, but no funding would be required from the States. This approach would represent a departure from the Federal-State partnership created by the National Historic Preservation Act of 1966.

A third alternative would be to continue the present program, attempting to integrate more effectively existing State and local inventories into a national inventory. This effort would require adherence to some uniform set of standards regarding the form and content of information contained in the various inventories. It should be noted that reliance on State and local inventories would not provide a complete national inventory within the foreseeable future unless additional funding was available from some source. Also, it would be necessary to continue with the Federal effort, mentioned in the first alternative, to complete inventories on federally owned lands. Under

this alternative, the requirement for Federal project planning to both identify and take into account historic resources is of special importance.

Not all surveys and inventories currently meet acceptable professional standards

To be useful in a national preservation program, the information contained in an inventory of historic properties, while less than that needed for evaluation and registration, must be accurate, up to date, and in a usable form. With the exclusion of the 12,000 or so properties listed in the National Register, the majority of entires included on the various State and local inventories are deficient in one or more of those areas. In many cases, data are badly out of date. It is not unusual to find that a property inventoried 15 years ago has since disappeared, but no change has been made in the inventory to reflect this. Similarly, inaccurate information, such as incorrect addresses or improperly drawn boundaries, is not uncommon.

Perhaps the most serious shortcomings in the many existing inventories are the lack of consistency in the format of the data and the lack of uniformity of standards, both for professional capability of survey personnel and for the criteria by which they judge properties. To be an effective basis for planning, data on an historic property must contain facts about the property and must be in a form that can be readily retrieved and understood by an agency or organization that has need for the data. An example of one step toward this goal of readily usable data is the adoption of universal transverse mercator map coordinates for locating National Register properties. These coordinates are keyed to the standard U.S. Geological Survey maps used extensively by Government agencies. Properties thus designated are much easier to locate than those indicated only by traditional street address, and coordination with standard maps makes possible the use of mass produced overlays indicating the location of historic properties. This logical system has developed, however, only at the Federal level. The historic property inventories at other levels are generally characterized by lack of awareness of contemporary data processing, storage, and retrieval technology.

The second aspect of the uniformity problem concerns human factors. It relates to how judgments are made on the value of historic properties, and who makes those judgments. Present inventory activities are carried out to widely varying standards. While the National Park Service has set criteria for the evaluation of properties for entry on the National Register, no national standards exist for the initial determination of the worthiness of a particular property to be included in a basic inventory. As a result, some States, such as Virginia and Ohio, only identify properties that may be classed as "landmarks," a substantially higher standard than the Advisory Council envisions for a basic national inventory. Not all States include archeological sites in their inventories, which seriously distorts the accuracy and usefulness of many existing inventories. In Arizona alone there are 50,000 known archeological sites.

Closely related to this diversity in criteria is the diversity in professional qualifications of the people doing inventory work. While the National Park Service has set certain standards for the personnel working on State surveys and inventories funded under the National

Historic Preservation Act, the large number of people doing local survey work, including those funded under the Housing and Community Development Act, must meet no particular requirements regarding professional qualifications. Qualified personnel are important because determinations of historical value at the preliminary inventory level require skilled judgment and are not susceptible to simple applications of fixed standards. Professional skill is also essential in properly sorting out and recording the appropriate information for an inventory entry, so that entry is useful to the project planners who ultimately use the inventory for decisionmaking. The usefulness of locally generated inventories in the compilation of a national inventory is largely dependent on this single factor.

A number of approaches are available to insure that inventories meet acceptable professional standards. Some of these approaches are complementary while others provide alternate ways of achieving desired objectives.

Establishment of professional qualifications for personnel engaged in survey and inventory work would make it more likely that proper judgments would be made on historical values, and that information would be compiled in a usable form. Professional standards could be imposed by the Federal Government as requirements for participation in a national inventory program. Alternatively, standards for professional qualifications could be established by State or local bodies, ideally compatible with the standards the Federal Government has established for survey work carried out under its existing programs.

While reliance on capable professionals will go a long way to insure the production of reliable data, additional steps may be necessary to make that data readily usable. Standard requirements for information included in inventories would eliminate problems of inconsistent State inventories.

Requirements, imposed presumably by the Federal Government as either mandatory or voluntary guidelines, could regulate: (1) types of historic properties to be considered, thus eliminating the occasional exclusion of archeological sites; (2) the degree of significance required for inclusion, hopefully avoiding the "landmark" syndrome; (3) the type of information to be included; and (4) the format for presenting that information. Such requirements could go as far as specifying that a standard nationwide inventory form be used, or simply spell out guidelines to allow greater State and local discretion in compiling inventories. A lesser degree of federally prescribed standards will probably require a higher level of professional capability in the person doing the inventory, as he will be permitted a greater degree of discretion in his decisions.

Any guidelines for the form and content of inventories must consider the dissemination of the information gathered. Contemporary data processing methods should be considered for historic property inventories. Canada offers a model in its development of the Canadian Inventory of Historic Buildings, the world's first comprehensive architectural inventory created for a computerized information system. The Canadian method may well be adaptable to the American preservation program. Adoption of computer and related techniques may require nationally standardized inventory forms and techniques so that the information gathered may be readily processed. Existing programs, such as the Historic American Buildings Survey, the

Historic American Engineering Record, and the present National Survey, would need to be brought into this data processing system.

A final factor determining the usefulness of any national inventory is whether its information remains current. Provision should be made for periodic reviews of the existing inventory to delete properties that have been lost. Conversely, the accumulation of historic properties is a continuing process. As time passes, additional properties achieve significance or properties previously considered insignificant are later judged to have been erroneously evaluated. The need for a continuing inventory process, reviewing existing entries and considering additional ones, is clear. The means for review will depend largely on the basic structure of the national inventory.

While professional standards and guidance are essential for a national inventory, local communities, organizations, and individuals should be given an opportunity to participate in identifying historic properties

Public participation in the inventory process has been quite limited in the current national historic preservation program, with the notable exception of surveys conducted by a number of local public service organizations. This is unfortunate because historic preservation efforts can only be effective when they are supported by the community. It is therefore desirable to involve citizens at the early stages of the preservation program to stimulate interest in preservation efforts. The identification effort itself may also benefit. While it is clear that judgments regarding the historical value of inventoried properties must be made on professional standards, public participation may provide access to useful information on people, places, and events that would otherwise be lost. This is particularly true as the national preservation program continues to develop its recognition of ethnic and cultural history. One caveat, though, must be noted. Public participation must not be allowed to distort or influence professional evaluations of historical significance because of public interest in plans to replace or redevelop a particular historic property. The national preservation program provides an appropriate forum for development needs to be weighed against historical values. The identification process should remain free of that debate.

The means of including public participation in the national inventory process depends on the manner in which the inventory is carried out. Responsibility for involving the public will be placed on the agency that actually conducts survey and inventory work at the local level. To meet this responsibility, agencies must cultivate the art of public relations. In this vein, the experience of the Historic American Buildings Survey is worthy of note. It has taken care to publicize the activities of its survey teams in a locality and to work closely with local preservationists to make local citizens aware of the value of the historic properties that are being recorded.

There is no clear responsibility for Federal agencies to identify historic properties during the planning of Federal projects

In the absence of a comprehensive national inventory of historic properties, Federal project planning must rely on fragmentary sources of existing information, other data discovered through environmental review processes and, in some instances, ground surveys of varying degrees of intensity. As a result of this somewhat haphazard approach,

conflicts occur when historic properties are identified just before construction commences. At best, the result is a costly delay in the project while a preservation alternative is sought. Frequently, this requires time-consuming and expensive litigation, resulting in an injunction against further agency action until it has fulfilled additional procedural requirements. At worst, the agency proceeds over the objections of preservationists and the property is destroyed. In either case, time is lost, money is unnecessarily expended, and bitterness characterizes the encounter.

The Advisory Council is well aware of these all too common situations. The El Paso County Jail in Colorado Springs, the Westchester County Courthouse in New York, St. Mary's Seminary in Baltimore, and the Riggs Bank in Washington are but a few of the cases in just the past year where late identification of an historic building produced a conflict irreconcilable because of its timing.

Without a national inventory, present preservation laws are inadequate to solve this problem. There is no clear mandate to Federal agencies to undertake necessary surveys in project areas during the early stages of project planning. Section 106 of the National Historic Preservation Act only requires consideration of properties actually listed on the National Register, which includes only a small percentage of the Nation's historic properties. The National Environmental Policy Act requires consideration of environmental factors, including historic preservation, in project planning, but gives no guidance on identifying those factors. The procedures of the Advisory Council, which do not have the effect of law, direct agencies to identify properties that may be eligible for the National Register in accordance with Executive Order 11593 but leave unspecified the kind of effort required. Only section 2(b) of Executive Order 11593 clearly directs Federal agencies to determine whether properties they own or control are eligible for the National Register prior to taking actions that may adversely affect them.

The absence of a clear responsibility to identify historic properties during project planning is one of the most serious shortcomings in the present historic preservation program. It leaves that major portion of the Nation's heritage that is eligible for the National Register, but not yet listed on it, devoid of the legal protection envisioned by the Congress in the National Historic Preservation Act. Until a national inventory is complete, it is imperative that Federal agencies be clearly directed to avoid the inadvertent destruction of properties that may be eligible for the National Register.

The problem has two facets. First is the lack of a clearly defined statutory requirement that Federal agencies identify historic properties. Second is provision of sufficient funding to undertake adequate surveys and inventories.

It is clear that there is only one solution to the need for a statutory mandate. However, there are various ways that a legislative directive could be phrased. A general requirement that Federal agencies identify historic properties during the early stages of project planning could authorize the Secretary of the Interior, the Advisory Council, or each agency to issue rules or guidelines for carrying out such a responsibility. This would provide an opportunity to coordinate Federal project surveys with any comprehensive national inventory.

Alternatively, a more precise statute could specify the exact extent of identification activities required of Federal agencies.

Closely related to the statutory mandate is the need for the specific authorization of funding for historic property surveys. Frequently, even when agencies are willing to undertake surveys and compile inventories in project areas, the best intentions are frustrated by technical prohibitions against the use of project funds for such activities and the lack of money from any other source. The simplest solution would appear to be authorizing the use of project funds for identifying historic properties likely to be affected by the project. This approach would be similar to that adopted for archeological salvage in the Archeological and Historical Preservation Act of 1974. An alternative approach would be the request of special appropriations by each agency to meet its survey and inventory needs. A third alternative would be the creation of a special inventory fund administered by the Secretary of the Interior, from which funds would be available for surveys and inventories in Federal project areas. These funds, regardless of their source, could then be used to employ expert personnel within each agency to do survey work, to contract with non-Federal professionals, or to engage professionals employed by the National Park Service.

SUMMARY

The inadequacy of present knowledge about the nature and extent of historic properties within the United States seriously undermines the current national preservation program. Significant properties are lost through lack of knowledge. The number of historic properties on the National Register is too small to use as a comprehensive planning tool and its rate of increase is too slow to see early resolution of this problem. Decisions are being made on the basis of insufficient information. The allocation of preservation resources and the comparative values of historic properties and needed projects that may impair such resources are being determined with an inadequate data base. The identification problem, though, has readily ascertainable solutions—a promptly completed, comprehensive national inventory of historic properties within the context of the existing national program and specific interim steps to avoid the inadvertent loss of historic properties. What is now required is a commitment of the Federal Government to those goals.

CHAPTER III.—EVALUATING AND REGISTERING HISTORIC PROPERTIES

After the initial task of identifying a property as likely to possess some historical significance, the next step is to evaluate the nature of that significance and the relative value of the property in the Nation's inventory of historic properties. The result of this evaluation will determine whether the property should be given some formal recognition, usually through entry on an official registry of acknowledged historic properties. This registry forms the basis for determining what properties will be protected from destruction and assists in the allocation of public and private resources for the preservation of historic properties.

As the method of evaluating historic properties is closely related to the information requirements for a register of historic properties, evaluation and registration must be considered as a single system. To be effective in the national historic preservation program, the evaluation and registration process must:

- Produce a substantially complete listing of the Nation's historic properties in accordance with uniform criteria of significance, applied by qualified professionals,
- Classify properties in a manner that identifies the relative value of each historic property in the national program and provides guidance for later decisions regarding protection, preservation, and enhancement of the property.

The current program meets some but not all of these standards.

THE PRESENT EVALUATION AND REGISTRATION SYSTEM

The national historic preservation program employs both legislative and administrative processes to evaluate historic properties and then give worthy ones official recognition. The legislative process, while longer established, affects only a small portion of the Nation's historic properties, because it deals only with those outstanding nationally significant properties that may be suitable for Federal ownership. The newer administrative system reflects the expansion of the national program and provides a more effective means of compiling a comprehensive and well documented register of the Nation's historic properties.

Congress officially designates historic properties in two ways. Most conspicuous is the creation of national parks. While the first national park, Yellowstone, was created in 1872 primarily to preserve its natural values, Congress soon applied the national park concept to preserving historic properties and established a number of national military parks to preserve and commemorate Civil War battlefields. The breadth of historic resources deemed suitable for national park designation has continued to expand during the 20th century, so that 128 national parks have been established to preserve a wide variety

of historic properties. Usually under Federal ownership and administered by the National Park Service, these legislatively established parks range from prehistoric areas, like Mesa Verde, to such national shrines as Independence National Historical Park. Each possesses historical significance to the Nation as a whole and has been created by act of Congress in the normal legislative process.

A related legislative designation of historic properties is the national historic site. National historic sites differ from national parks in name only. Both designations are limited to nationally significant properties and usually result in acquisition of the property by the Federal Government. Like national parks, national historic sites are created by legislative initiative, culminating in an act of Congress establishing the site. To date, there have been 39 national historic sites created by Congress. They range from Fort Laramie to Abraham Lincoln's Birthplace to the Allegheny Portage Railroad.

It is not surprising that only 167 historic properties have been officially recognized through congressional action, while over 12,000 properties have been evaluated and registered by the Federal executive branch. Evaluation of a property's historic significance and entry of qualified properties on an official list can be accomplished more efficiently by an administrative agency rather than through the more cumbersome legislative process. Recognition of this prompted Congress in 1906 to authorize the President to designate outstanding historic properties located on Federal lands as national monuments. Limited to nationally significant properties, 87 national monuments have been designated, most of which have been outstanding prehistoric sites such as Montezuma's Castle and Canyon de Chelly in Arizona.

Current policy generally limits executive branch designations of national monuments by requiring the concurrence of Congress, usually through authorization of appropriations for the operation of the monument. Since the end of World War II, only 12 national monuments have been declared, the last being Alibates Flint Quarries, Texas, in 1965. By comparison, the 93d Congress alone designated 10 new historical areas for Federal ownership. It would appear, then, that the usefulness of the national monument designation has been supplanted on the one hand by the national park/national historic site process of Congress and on the other by broader administrative evaluation and registration programs.

The broader Federal efforts to evaluate historic properties were authorized in the Historic Sites Act of 1935. The National Survey of Historic Sites and Buildings has since undertaken the identification and evaluation of historic properties beyond those in Federal ownership. The National Survey evaluates properties of national significance on the basis of criteria developed by the National Park Service. As a result of this evaluation, properties are classified as possessing exceptional value in commemorating or illustrating the history of the United States. Prior to 1960 there was no register or other official recognition of historic properties evaluated as significant by the National Survey. In 1960, the Secretary of the Interior created the Registry of National Historic Landmarks to provide Federal recognition of nationally significant properties. Properties evaluated by the National Survey are recommended for landmark designation by the Advisory Board on National Parks, Historic Sites, Buildings, and Monuments, a body of

non-Federal experts in history, architecture, and archeology created by the 1935 act. The Secretary of the Interior then acts upon the Advisory Board's recommendation and may designate the property a national historic landmark. The owner is invited to participate in the program, by agreeing to maintain the historical integrity of the property. Should the owner violate the agreement and the integrity of the property be impaired, the Secretary may revoke the landmark designation. Of the 1,258 national historic landmarks designated since 1960, only 1 has lost that designation.

The Registry of National Historic Landmarks served as the basis of the National Register of Historic Places, authorized by the National Historic Preservation Act of 1966 and maintained by the Secretary of the Interior, through the National Park Service. The National Register expands Federal recognition of historic properties beyond just those of national significance to include properties of State and local significance. The importance of this expansion in providing an effective mechanism for officially recognizing the Nation's historic properties is clear. Of the 12,000 properties currently listed on the National Register, only about 10 percent are considered nationally significant. The remainder have significance at the State or local level.

The National Register is inclusive not only in the levels of significance, but also in the categories of significance and the types of properties eligible for listing. The 1966 act specifies that properties significant in history, architecture, archeology, or culture are eligible for National Register listing. Criteria issued by the National Park Service further amplify these basic categories, so that the National Register now includes properties as varied as sites of historic events, outstanding examples of American architecture, sites likely to yield archeological data, and properties significant for their association with a particular ethnic group or cultural theme. Parallel to these broad categories of significance is the type of properties that are eligible for National Register listing. The National Historic Preservation Act specifies that districts, sites, buildings, structures, and objects are eligible for the National Register.

Based on these categories, a variety of properties have been entered on the National Register, ranging from the obvious to the unusual. Districts include traditional urban districts such as Georgetown in the District of Columbia, entire small towns such as Silver Plume, Colo., and rural areas such as Green Springs, Va., an 8,000-acre area of 18th and early 19th-century farms. Buildings on the National Register may be grand, like the Breakers in Newport, R.I., or unimposing, such as a simple farmhouse in the Midwest; they may be an excellent example of Federal-style architecture, like Liberty Hall in Frankfort, Ky., an early skyscraper like the Wainwright Building in St. Louis, or landmarks of modern architecture such as Frank Lloyd Wright's Falling Water. National Register sites include important archeological sites, such as Cahokia Mounds in Illinois, and battlefields such as Gettysburg and Antietam. Structures range from bridges, such as the Eads Bridge over the Mississippi, to Launch Complex 39 at Cape Kennedy, site of the first manned flight to the Moon. Objects include ships, such as the schooner *Wawona* in Seattle, petroglyph boulders, such as Pohaku ka Luahine in Hawaii, and even a steam locomotive, Number 152 of the Louisville & Nashville Railroad. While the inclusiveness of the National Register is great so that virtually any kind

of property significant in American history may be entered, there has been a limit drawn regarding objects that normally are considered as part of a museum collection. The precise course of this line, though, is not entirely clear.

To evaluate potential listings for the National Register, the National Park Service has established a comprehensive program involving the States and other Federal agencies. Using criteria and policies established by the National Park Service, the State historic preservation officer conducts the professional evaluation of potential National Register properties in his State. Nomination forms are completed by State personnel, reviewed by a State review board comprised of experts in history, architecture, and archeology, and forwarded to the National Park Service by the State historic preservation officer. The National Park Service reviews the nomination for technical sufficiency and determines whether published National Register criteria are met. When the nomination is approved, the property is formally entered in the National Register.

Federal agencies evaluate and nominate properties that they own in a similar fashion. Nominations are prepared by professional staff, usually in consultation with the State historic preservation officer. Completed nominations are sent to the National Park Service where they are reviewed and properties are entered on the National Register. To date, Federal agencies have submitted some 450 nominations, and 400 properties have been subsequently listed on the National Register.

While nominations from States and Federal agencies provide the largest flow of new entries on the National Register, properties are added in several other ways. As described above, the National Survey is an on-going program, with new national historic landmarks being created periodically. These landmarks are automatically listed in the National Register. In 1974, 87 properties were added to the National Register in this manner. Similarly, when new national historic sites and national historic parks are created by Congress, they are automatically entered in the National Register.

Federal activities provide for the evaluation of historic properties in two other ways. The Historic American Buildings Survey and the Historic American Engineering Record review a number of properties each year. Although these surveys are primarily for the purpose of recording historic properties with archival photographs and scale drawings, they result in a quantity of useful information on the properties being recorded. Recently, both the Historic American Buildings Survey and the Historic American Engineering Record have been routinely making this material available to Federal agencies and State historic preservation officers to assist them in preparing National Register nominations.

The other major source of Federal assistance in evaluating historic properties is found in the planning of Federal and federally aided projects. As required by the National Environmental Policy Act and Executive Order 11593, Federal agencies must consider the impact of their actions on historic properties. The Housing and Community Development Act imposes similar duties on cities with regard to the use of Federal community development funds. To guide agencies in meeting this responsibility, the Advisory Council has issued procedures requiring Federal agencies to identify National Register and National Register eligible properties that may be affected

by their projects. A number of agencies have adopted similar internal procedures. As a result, Federal agencies have developed increasingly close working relationships with State historic preservation officers during project planning, with the objective of evaluating affected historic properties to determine whether they may be eligible for National Register listing. While the system is by no means perfect, the end product has been a generally more complete evaluation of the significance of historic properties that are located in Federal project areas. Frequently, these evaluations result in nominations to the National Register.

Through this process of nominations and other entries, the National Register has grown to include over 12,000 historic properties. Of these, approximately 1,000 are historic districts which may include dozens or even hundreds of individual buildings. As of February 1975, State listings ranged from Puerto Rico's low of 3 to a high of 596 for Ohio. Three States have over 500 properties on the National Register, 4 between 300 and 500, 26 between 100 and 300 and 23 less than 100. The National Register, however, is nowhere near complete. The National Park Service estimates that the National Register will level off at about 67,000 properties. At the current rate of nominations, approximately 200 to 250 a month, the National Register will not reach this stage until the late 1980's. In the event an accelerated national inventory is undertaken, it is anticipated that the number of historic properties fully evaluated and entered on the Register will increase significantly within a shorter time period. Of course, this rate is dependent upon the speed with which a basic national inventory is completed and on the staff capability at the Federal and State level to keep evaluations and nominations apace with any accelerated national inventory.

While the evaluation of properties and their nomination to the National Register is generally a federally sponsored process and conforms to national standards, there are widespread evaluation and registration activities conducted at the State and local level at non-Federal standards and without Federal assistance. Approximately one-half the States have some form of State register of historic properties, although, like the National Register, most of these are far from complete. These registers are usually patterned after the National Register and are compiled by professional surveys and evaluations, frequently the same process that leads to National Register nominations. While State registers serve useful purposes for State historic preservation programs, they are rarely coextensive with a State's National Register listings. This occasionally causes confusion when public agencies are seeking to identify historic properties that may be affected by a proposed project. As the National Register criteria extend to properties of State and local significance, it would appear that a State's register should eventually be coextensive with the State's National Register listings.

In addition to State programs, there is a sizable number of programs for evaluating and registering historic properties carried out by local governments. These are usually related to protective ordinances. Consequently, because the designation must meet certain legal standards, the evaluation and registration process tends to be more formalized and to require public participation. This kind of process usually

does not relate at all to the National Register program, although the resulting designation is clearly based on a finding of local significance that would qualify a property for the National Register. Frequently, locally designated properties are later nominated by the State to the National Register, but this does not follow local designation as a matter of course.

Not all local evaluation and registration activities result from the need to designate properties for local protective ordinances. The District of Columbia had a sophisticated and comprehensive landmarks register years before listing on that register had any legal or protective consequences. A number of communities have privately compiled local landmark lists, such as San Antonio, Tex., Marshall, Mich., and Jonesboro, Tenn. Evaluation and registration efforts vary greatly at the local level. Few, if any, are closely coordinated with the Federal-State program to evaluate and list properties on the National Register.

Unlike the identification efforts of the national historic preservation program, the framework for evaluating and registering historic properties is basically completed and its work is well underway. However, a number of problems do hinder the successful attainment of the program's objectives.

The current National Register is not complete enough to provide a definitive listing of the Nation's historic properties for accurate decisions regarding the protection of properties and public funding for their preservation

While the National Register criteria are sufficiently broad to allow the Register to become a comprehensive listing of the Nation's valued historic properties, because only 12,000 properties are now listed, the Register does not yet provide a comprehensive list of properties significant at the national, State, and local level. Consequently, decisions to save or destroy a particular property, or to allocate money to preserve or restore it, are made without really knowing its relative place in the Nation's total inventory of historic properties. For example, a federally assisted highway may threaten a farmhouse that has been listed on the National Register as an outstanding example of Greek Revival architecture. However, due to the present incomplete status of the National Register, one cannot tell if this property is the outstanding example in a particular area, whether there are better but unlisted examples, whether this farmhouse is unique, or whether it is but one of a large number of such buildings and just happens to have been listed, as is often the case, because it was threatened by the highway. Without such information, it is difficult, if not impossible, reasonably to determine whether to save the property or let it be destroyed. Public funds might be spent to preserve a building that is commonplace; conversely, a building that is unique might be demolished to make way for the highway. A similar dilemma is posed when a decision has to be made on spending the extremely limited public funds available for historic preservation. If a property's significance and quality relative to other buildings in its class are not known, a decision to spend scarce funds on it cannot avoid raising doubts.

Because the Advisory Council's experience confirms that the present National Register method of thoroughly evaluating and formally recognizing significant properties is comprehensive and sound, the only answer to this problem is the rapid completion of identification of historic properties and their subsequent evaluation and registration under the present process. In most basic terms, this means more public funding is needed, although present data does not indicate how much. The increased burden for evaluation and registration could be borne by either the Federal or State and local governments. Through existing funding channels of the National Historic Preservation Act grants program, the Federal Government could earmark a certain percentage to be used by the States for the evaluation and nomination to the National Register of identified historic properties. An alternative may be provided by increasing the Federal portion on matched funds used for this purpose. The current 50-50 basis could be raised to 70-30, for example. A third method of additional Federal funding could be a special appropriation to fund a concerted effort to complete the National Register.

Reliance on State and local funding would be more uncertain. The only way to make sure funding would be forthcoming would be to condition a State's continued participation in the national historic preservation program on the development of an acceptable plan for completion of its National Register nominations. This would be similar to sanctions considered for certain versions of proposed national land use policy legislation. In the absence of any sanction, an expanded program would be essentially voluntary and the allocation of State and local funds to the evaluation and registration of historic properties would have to compete with other pressing community needs.

While the National Register is incomplete, a mechanism needs to be established to make certain that properties that may eventually be listed in the National Register are not destroyed before they can be evaluated

This problem is closely related to the process of identifying historic properties during Federal project planning. The current program requires Federal agencies to obtain determinations of National Register eligibility from the Secretary of the Interior for historic properties that may be affected by the agencies' projects. The program can be an effective means of insuring that properties of potential National Register caliber are fully evaluated and given the same consideration in Federal project planning as those already entered in the National Register. At present, it is moderately successful. The shortcomings can be traced to the fact that the requirement of seeking eligibility determinations derives from procedures of the Advisory Council and not from any clear statutory directive. This leaves compliance essentially a matter of agency discretion.

The obvious solution is the enactment of a legislative directive that Federal agencies evaluate for National Register listing properties that may be eligible and may be affected by proposed Federal actions. An alternative would be the clear authorization of the Secretary of the Interior or the Advisory Council to issue regulations to the same end that would be binding on other Federal agencies.

While the evaluation of properties for the National Register is formally guided by established criteria, application of those criteria needs to be uniform and administered solely on the basis of capable professional judgments

The inherent nature of the National Register program as a Federal-State partnership necessitates a high degree of decentralization. There is less control, consequently, over professional evaluations of historic properties and the application of the National Register criteria. As a result, the criteria are not uniformly applied. Properties that would be nominated to the National Register in one State may not be found eligible in another State, simple because of subjective interpretations of the criteria. It should be noted that this problem results in too few, rather than too many, properties entered in the National Register, as the National Park Service makes sure that all entries meet its interpretation of the criteria. Those nominations not up to the standard are rejected, but those that a State mistakenly believe are below the standard are not nominated and are therefore rarely discovered by the National Park Service.

Decentralization raises another problem. It is not uncommon for a nomination, professionally proper, to be held up by a State, frequently by the Governor's office, because entry on the National Register will prove inconvenient for a construction project advocated by the State. This situation is doubly unfortunate, because it subverts the professional determinations of a property's significance and because this frustrates the intent of Congress that conflicts between publicly funded projects and preservation objectives be worked out in the forum of the Advisory Council.

There are a number of ways that the evaluation of historic properties can be made more uniform nationally while preserving the desirable features of the Federal-State partnership. They would upgrade the expertise of the people administering the program and limit the amount of discretion in applying the present National Register criteria.

Certain requirements presently exist for personnel outside the Federal Government that are involved in evaluating historic properties for National Register listing. The National Park Service requires that the State Historic Preservation Officer have a full-time staff with professionally recognized qualifications in the fields of history, architecture, and archeology. Other disciplines, such as planning, are encouraged. In addition, the National Park Service has recommended, but not required, minimum formal qualifications for people conducting survey and evaluation work as part of the National Register program. Unlike the staff requirements, these standards are merely guidelines. However, no standards or guidelines exist concerning the qualifications of the State historic preservation officers appointed by the Governors. In one State, the State historic preservation officer was also the head of the State highway department. It is not infrequent that State historic preservation officers wear two hats. One option for upgrading professional capability is making such standards mandatory for all people engaged in survey and evaluation work carried out with Federal funds or as the basis for nominations to the National Register. A related option would be the development of civil service job classifications reflecting these

standards and establishing readily identifiable norms for Federal personnel engaged in historic preservation work.

While such standards could be established by administrative directive, clear legislative authorization to set minimum professional standards would clarify any legal questions that might otherwise arise and would reflect congressional acceptance of the need for professional capability in the national historic preservation program. Moreover, a specific congressional requirement of professionalism in the evaluation and registration process would give Federal agencies a statutory basis to request appropriations for hiring the necessary staff to fulfill their responsibilities in the National Register program. A lack of such authorization has frequently been cited by Federal agencies as a bar to hiring the necessary preservation professionals.

Regardless of any further efforts to establish professional standards, the goal of uniformly applied National Register criteria would be greatly aided by a vigorous, nationwide training and education program. Two aspects of such a program deserve consideration. First is the wide distribution and explanation of the basic National Register criteria, the means of applying them, and the basic techniques involved in evaluating the significance of historic properties. It is especially important to get such material to the local level in order to make local programs compatible with and contributory to the State and national preservation programs. This would also assist communities in evaluating historic properties for preservation planning as well as for project planning funded by the Housing and Community Development Act. Further descriptive and instructive material would require a nominal Federal investment, but would reap considerable dividends.

The second approach to improving the understanding of Federal field personnel and State and local preservation workers is a comprehensive training program. An effective training program could be carried out under the leadership of a Federal preservation agency, such as the National Park Service, the Advisory Council, or even the National Trust. It could take a number of forms:

- An intergovernmental personnel exchange program in which State, local, and other Federal employees are given the opportunity to train on the job in the National Park Service's office that maintains the National Register;
- The assignment of preservation professionals well versed in the evaluation and registration process to various Federal agencies and to State or local offices to train their staffs;
- The conduct of regional seminars or a Civil Service training course for Federal, State, and local employees;
- The enrollment of key Federal, State, and local officials in longer term professional programs for preservationists, such as those conducted at Columbia University and the University of Florida.

Needless to say, the success of any of these alternatives is dependent on the commitment of sufficient public funding, both Federal and non-Federal, to develop an adequate program.

A final alternative for improving adherence to National Register criteria would be direct Federal funding and employment of State preservation administrators to conduct evaluation and registration activities in each State. This would provide sufficient central control over the qualifications of officials making initial judgments on National

Register eligibility, and would insure general consistency with the National Park Service's interpretation of the National Register.

The present National Register does not classify historic properties in a manner that guides later decisions regarding protection or assistance for the property

While the National Register evaluation process informally classifies properties according to their type (district, building, site, structure, or object), the level of their significance (national, State, or local), and the nature of their significance (historic, architectural, archeological, or cultural), these categories are not designed to guide later preservation decisions regarding protection from impairment or allocation of funds. Similarly, the National Register evaluation criteria, which specify the characteristics that qualify a property for listing, are necessarily general, in order to be applicable to a variety of properties and situations throughout the country.

In short, the evaluation of properties is limited to the simple question of whether a property meets the criteria for entry on the National Register. With the exception of national historic landmarks, national parks, and national historic sites, properties are not placed in formal categories that may later be used to determine priorities in decisions on protection or funding. Knowledge gained for registration is not used to form an initial professional judgment on the future needs of the property and any special factors that should be considered in protecting the property, such as its relation to its environs or its suitability for adaptive use from the viewpoint of the property's historical value and integrity. Only certain factual information—ownership, condition, accessibility, present uses, legal status, and a summary of historical significance—is recorded. Because no additional professional judgments or evaluations are made during the registration of the property, information needed for later decisions is lost. Considerable effort is required at a later date to reassemble the data to make decisions regarding the property. Preliminary judgments on desirability of restoration, suitability for adaptive use, and special factors to be considered in the preservation of the property would all assist later decisionmaking.

Under the present national historic preservation program, the lack of categories and classifications is a question of efficiency. They are not required to administer existing programs. For example, no distinctions are currently drawn on the basis of national or local significance when the question arises of applying the protective provisions of section 106 of the National Historic Preservation Act. Similarly, archeological sites are just as eligible for grant-in-aid money as architecturally significant buildings. However, should a wider range of protective measures become available in the national historic preservation program, as is considered in the next chapter of this report, administration of the protective system will require these initial distinctions between the various kinds of properties. Similarly, as discussed in Chapter V: Preserving and Enhancing Historic Properties, should a revised matching formula based on significance be developed, this information will be necessary.

Assuming that a more categorical National Register is desirable, there are a number of ways to create useful classifications. The system that provides categories most useful for assigning priorities for

protection and assistance is the formal assignment of levels of significance—national, State, or local—to National Register properties. Similar categories are integral to many foreign systems, such as France, the Soviet Union, and Japan, providing the basis for a more sophisticated preservation program. The establishment of levels was envisioned in the Schneider report, which led to the passage of the Historic Sites Act of 1935, and by the sponsors of the National Historic Preservation Act of 1966. However, the Congress elected to omit classification in the legislation and allow the Secretary of the Interior to establish his own classification voluntarily. Sufficient legal authority exists for the Secretary administratively to establish such categories. Alternatively, the categories could be legislatively imposed. This may be more appropriate if additional protective and funding measures, keyed to levels of significance, are enacted.

It would also be useful to consider following the example of the Soviet Union in creating a category of international significance. Properties falling into this category would then be eligible for entry into the World Heritage Trust, an inventory of properties whose significance transcends national boundaries. This listing was created by the World Heritage Convention, which the United States ratified in 1973. Another kind of classification system would assign certain standards of preservation to various classes of properties. France, for example, has a two-tier system. The first class of properties is afforded certain kinds of legal protection, while the second class is entitled only to lesser protections. The District of Columbia has established a three-level system that more clearly illustrates the assignment of a value to each historic property during the evaluation and registration process. Category I includes landmarks of importance which should be preserved or restored, if possible. Category III is landmarks of value which should be preserved, or restored, if practical. Such a system has obvious advantages in guiding decisionmakers on the degree of deference to be afforded a particular historic property, but unfortunately encourages the sacrifice of properties placed in this lowest category.

To translate the information gathered during evaluation and registration into useful guidance for long-term preservation, it may be useful to incorporate initial professional judgments on the preservation needs of the historic property into the registration form. For example, if the person evaluating the property believes that its environment is important to its historical integrity, then that judgment would be noted. Later, if a Federal project would alter that environment, the Federal agency would learn of this possibility as soon as it consults the National Register form. On the other hand, if the property's environment has already been so altered as to have no significance to the property, the agency would be alerted to this possibility. Similarly, the nature of the resource itself may be used to guide later actions. An archeological site important for the data it may contain may not require the same form of protection as an historic district. In the present system, such concerns frequently are not raised until late in project planning when the agency comes in contact with the Advisory Council. In another case, an initial professional judgment that the primary value of a property is its reflection of a number of different

architectural styles should influence later decisions to restore the property to a particular period. While the advantages of recording additional information are clear, so too is the increased amount of staff work in completing the registration process. The essential question is whether, in a sufficient number of cases, more time and effort is required to rediscover this information during project planning than would have been required to record it during registration of the property.

It should be noted that all three of these approaches, or any combination of them, could be used to provide additional guidance in the registration form to later decisionmakers. The optimum approach depends on the staff resources available during registration and on any future changes in the national historic preservation program that would require specific property categories or classifications.

The present scope of the National Register may not be properly drawn to identify and designate all the Nation's historic properties

While the National Register provides a comprehensive listing of what may be considered the national patrimony, it possesses one particular area of uncertainty and may overlook another area of important historic and cultural resources. The extent to which museum collections fall within the National Register criteria is not clear. Comprised of objects, which are technically within the scope of the National Register, some museum collections have been listed in their entirety, such as the Army Medical Museum in Washington. Similarly, individual museum objects, such as the gunboat *Philadelphia* in the Smithsonian Institution, have also been listed. While including museum collections and objects seems logical in terms of compiling a National Register of all the Nation's historical properties, it raises practical problems. An initial question arises over the applicability of the Advisory Council's section 106 review authority to museum objects. A similar question is presented by the establishment of maintenance and preservation standards for federally owned National Register properties by the Secretary of the Interior.

The problems presented are clear. The distinct concepts of museum conservation techniques and practices do not always coincide with historic preservation policies developed generally for historic buildings and sites. The legal and administrative framework for protecting and preserving historic properties is not easily superimposed on museum needs. That framework is one essentially of environmental protection, guarding against the impairment of a property and its setting by incompatible development. Its application to an object within a museum is questionable. The full ramifications of including or excluding museum properties within the National Register system have not been fully explored. However, a number of real problems have arisen and it appears that a final resolution by the executive branch or Congress will soon be necessary.

The National Register currently gives no recognition to intangible historic resources. If the National Register is to be a comprehensive listing of the Nation's historical and cultural resources, then the present limitation to districts, buildings, sites, structures, and objects is too narrow. Certain aspects of the Nation's heritage, more properly referred to as "cultural resources" than "historic properties," lie outside this definition.

An instructive example is provided by Japan, which takes an unusually comprehensive view of its national heritage. Besides identifying what this report has termed "historic properties," the Japanese system recognizes intangible cultural resources: skill in the fine arts, the performing arts, and the applied arts as well as folk culture, which includes manners and customs relating to food, clothing, housing, occupations, religion, and the like. Japan employs unique methods of preserving these intangible resources, such as designating a man who makes samurai swords in the traditional manner as a "Holder of Intangible Cultural Property," and, by doing so, provides the assistance and protection of the government to the continuation of the nation's cultural traditions. With the current American interest in traditional crafts and skills, ethnic heritage, and the collection of intangibles popularly referred to as "folklife," this may be an opportune time to consider the preservation of intangible historic and cultural resources, either as part of the national historic preservation program or as a separate program.

To be useful for decisionmaking, information in the National Register must be accurate, up to date, accessible, and in a form that is readily usable

One of the primary reasons for maintaining the National Register is to provide meaningful data and information on registered properties for use by government project planners, preservationists, and the public. If the information contained in the National Register is insufficient, out of date, incorrect, inaccessible, or undecipherable, then the National Register fails to reach its potential as an informational and planning tool.

Sufficiency of information in the current National Register is not a serious problem. While initial professional evaluations (as discussed above) would be useful, the National Register does contain basic data on the type of property, its location, ownership, status, accessibility, present use, and present condition. However, early nominations do not supply all data at the level of precision now required for Register listings, such as the exact delineation of boundaries for listed historic districts. A concerted effort, requiring either additional staff or diverting part of the present staff from its regular registration work, could bring earlier listings up to current satisfactory informational levels.

There is a serious information deficiency in keeping National Register data current. A recent trip planned by one tourist using the National Register as a guide proved disappointing because a number of listed properties had been destroyed over the past few years but were still carried on the Register. The Advisory Council has had similar experiences in its review of Federal projects. Keeping information current is a time-consuming task that presently receives little attention because the National Register program has more urgent priorities consuming the time of the limited staffs of the State historic preservation officers and the National Park Service. A legislative requirement of periodic reassessments of National Register listings would raise the level of priority but would result in the diversion of staff from other important activities. While increased staffing is one obvious solution, more sophisticated data processing systems might

be helpful. Efforts could also be made to encourage the owners of National Register properties or local preservationists to help keep information current.

Accessibility to information could be improved under the present National Register program. The complete case files of the National Register are open to the public, but, being located in Washington, cannot be conveniently utilized by regional Federal offices, State and local planners, and the majority of the American public. The National Park Service does carry on an active publication program to disseminate information on National Register properties. Additional funding and staff would make this program more effective.

Closely related to the problem of accessibility is the need to put the information in a usable form. For the general public, the brief paragraph description contained in the periodic compilations published by the National Park Service may be sufficient. However, there is a great deal more information in the National Register files that would be of use and interest to the public; it could be disseminated if more staff and funds were available. For government planning purposes, different information is required—exact locations, precise boundaries, ownership, important physical features and the like. While much of this information exists in the National Register files, it must be readily available for project planners.

If contemporary data processing and retrieval techniques were applied to the National Register, its information would be promptly available to Federal, State and local project planners throughout the Nation in a complete and comprehensive form. These techniques would also facilitate statistical studies of the effectiveness of the preservation program, and make possible automated publications on National Register properties. The cost of its operation and the need to train adequate staff must be weighed against these benefits.

The National Park Service has initiated the first phase of such a data processing program. However, at current levels of funding, it will take 5 years to complete the project. A legislative directive to continue this effort, along with sufficient funding for completion at an earlier date, would benefit this important informational aspect of the National Register.

The present role of the public in the evaluation and registration system is not clearly specified

National Register listing of an historic property does not legally require the due process safeguards of notice, hearing, and appeal that are generally afforded property owners at the local level when their property is proposed for designation and subsequent regulation as a landmark. This is because National Register listing does not restrict the property owner from taking any action he desires regarding his property, including its demolition, while local landmark designation subjects him to the review or approval of the local government before he can alter or demolish his property. The only protections currently flowing from National Register listing are review procedures that Federal agencies must comply with before funding, assisting or licensing activities that may affect a National Register property.

Even though public participation is not legally required, such involvement is clearly desirable to generate interest and support for the

National Register program. Although currently under revision, National Park Service policies limit formal notification of properties under consideration for National Register listing to publication once of the pending nomination in the Federal Register. The property's entry in the National Register is also published in the Federal Register, and at that time a letter is normally sent to the property owner. In addition, the State historic preservation officer is encouraged but not required to take other steps to notify owners and local governments of pending nominations.

The problems that have arisen under the present system have not been legal; they have involved public relations. Property owners and local governments frequently are surprised and sometimes angered to find that a property has been entered on the National Register without their knowledge. As a result, hostility may be generated toward the program and the officials at the Federal and State level who administer it.

Solutions are not simple because excessive public involvement tends to cloud the professional evaluation with issues concerning proposed development for the property. These issues should not influence the registration decision. Also, the costs of notifying affected persons and the delays resulting from giving them an opportunity to participate will hamper a process that already is unable to keep pace with the backlog of historic properties to be evaluated and registered.

With these factors in mind, a number of alternatives merit consideration. An initial step would be informing the public about the nomination process and the meaning of National Register listing. Increased public understanding would eliminate a number of the public relations problems. Additional guidelines or requirements for public involvement could be established. These might provide notice to property owners and local governments during evaluation and registration and an opportunity to present oral or written views on the historical value of the property. Another method of meeting the public participation objective would be a concerted effort to involve citizens in all phases of the national preservation program, from initially identifying resources right through the administration of protective provisions. Familiarity of the public with the program would undoubtedly lessen what occasional criticism and hostility currently is generated by ignorance.

SUMMARY

The evaluation and registration phase of the national historic preservation program is essentially sound and operating efficiently, although it is not funded at a level that will fulfill the objective of a comprehensive National Register in the near future. Aside from funding problems which limit the success of many aspects of the program, the inadequacies of the program can generally be corrected by refinements. With such refinements, the evaluation and registration program will substantially meet the standards set forth at the beginning of this chapter.

CHAPTER IV.—PROTECTING HISTORIC PROPERTIES

Once historic properties have been identified and significant properties have been listed on a register, the next task of the national historic preservation program is to protect those properties from destruction and impairment. The goal of any mechanism for protecting historic properties is to make certain that properties are not inadvertently lost and to provide a means of resolving conflicts between the preservation of recognized historic properties and other essential public needs and policies. To achieve this goal, a protective system must—

- Be based on an effective system of identifying, evaluating, and registering historic properties, especially before decisions are made that threaten such properties;
- Provide a variety of timely measures to prevent or correct damage of historic properties, relating the degree of protection afforded to the nature and significance of the property and recognizing the relation of the property to its environment;
- Provide a professionally staffed public body to regulate adverse effects on historic properties and to resolve conflicts between historic values and the needs of other national policies;
- Involve State and local governments and the public in decision-making when historic properties are threatened.

Measured by these standards, the current protective system in the national historic preservation program is the least satisfactory part of the program.

THE PROTECTIVE SYSTEM TODAY

At the Federal level, the protection of historic properties is undertaken primarily through Federal ownership of significant historic properties and through regulation of Federal actions that may affect recognized historic properties. The Federal Government exercises no control over private actions affecting nonfederally owned historic properties, except to the extent that private actions use Federal assistance. Within this limitation, though, a number of protective devices have been implemented.

Federal ownership of historic properties is undoubtedly the most effective method to protect an historic property. Limited to the Nation's most significant historic properties, Federal ownership for preservation purposes is entrusted to the National Park Service through the National Park System, national historic sites, and national monuments. As a result, 167 properties now reside in Federal ownership for protective purposes. Additions normally are made through act of Congress, although the Secretary of the Interior is authorized to acquire historic properties for Federal ownership by various means, including condemnation. This power has been rarely exercised without the express consent of Congress, usually in legislation authorizing the establishment of a new park or historic site.

The use of Federal ownership for preservation is limited, because of the cost of acquisition, maintenance, and operation of historic properties and because it removes properties from the continued production of income and tax revenue. However, Federal ownership will continue to play an important role in the national historic preservation program for properties of paramount national importance whose preservation and availability to the public is desirable.

A related aspect of Federal ownership also deserves consideration in a review of the current national program. This is the Secretary of the Interior's authority, under the Historic Sites Act, to acquire easements and other legal interests in nationally significant historic properties. Easements involve the negotiation of an agreement with a property owner, in which, for example, the owner agrees to refrain from modifying his property without the Secretary of the Interior's approval. Unless the easement is donated, the owner is paid a reasonable sum for giving up the development potential. Although limited to properties of national significance under the 1935 act, the easement device has been effectively used in many instances, protecting such properties as Tudor Place in Georgetown, D.C., from the intense economic pressures for development and preserving the essential historical features of the property. Easements are usually less costly than outright acquisition of a property and allow the property to remain in private ownership while still assuring its preservation.

A related protective tool employed by the Federal Government under the 1935 act is the cooperative agreement. Not too dissimilar in practice from an easement although legally distinct, a cooperative agreement normally involves an exchange of Federal assistance for private preservation of the historic property. Notable examples include Jamestown National Historic Site in Virginia, and Touro Synagogue in Newport, R.I.

More extensive than the Federal ownership policies authorized by the Historic Sites Act are the protective review processes related to the National Register. Section 106 of the National Historic Preservation Act requires that prior to the approval of any Federal, federally assisted, or federally licensed project that may effect a property on the National Register, the head of the agency must take into account the effect of the project on the property and afford the Advisory Council an opportunity to comment. A broad administrative interpretation of the statutory term "undertaking," a number of favorable court decisions, and an increasing awareness of Federal preservation responsibilities have contributed to a continually improving record of effectiveness for the section 106 review process. During 1974, over 800 Federal projects were reviewed by the Advisory Council, mostly through a staff consultation process developed to assist Federal agencies during the planning of projects. Reviewed proposals ranged from highway construction and urban renewal projects to the licensing of a branch bank that would require demolition of several buildings in an historic district, the construction with Environmental Protection Agency funding of interceptor sewers across a battlefield, and even activities of the National Park Service relating to master plans for development at a number of historic national parks. In the majority of cases, alternatives were found that permitted the agency to proceed with a needed project while negative effects on historic properties were avoided or minimized.

Executive Order 11593 has been the basis for expanding the review and commentary role of the Advisory Council to include Federal actions that affect properties eligible for the National Register. Section 2b of the Executive order requires Federal agencies to seek the comments of the Advisory Council when they propose to transfer, sell, demolish, or substantially alter federally owned properties that the Secretary of the Interior has determined are eligible for the National Register. While Section 2b is limited to federally owned property, Section 1(3) of the Executive order requires Federal agencies to consult with the Advisory Council to develop procedures for the protection of nonfederally owned historic properties when carrying out agency projects.

In consultation with Federal agencies, and based on the authorities of sections 1(3) and 2b of the Executive order, the Advisory Council issued procedures which established the same Advisory Council review process for Federal action affecting properties determined eligible for the National Register as the National Historic Preservation Act requires for properties listed on the National Register. The result has been a single administrative review process that provides for Advisory Council comments on any Federal, federally assisted or federally licensed activity that affects a property whether it is already on the National Register or eligible for it. This expanded jurisdiction last year brought an additional 200 cases before the Advisory Council, spanning a range of Federal actions similar to those under section 106.

While the Council's review process has become increasingly effective in Federal planning, it does have some problems. Many Federal activities are not subjected to Advisory Council review because of an uninformed agency or lack of adequate Advisory Council supervision. Also, since the Advisory Council has no veto or approval power, the extent to which it can influence agency decisions varies with the agency and the project. Lack of public and agency awareness of Federal preservation responsibilities frequently results in last minute litigation, a hurried review, and a less than satisfactory outcome.

While the National Historic Preservation Act and Executive order provide the most comprehensive protection for historic properties that meet the level of National Register significance, other protective measures are available at the Federal level. The environmental impact statement process, conducted under the National Environmental Policy Act has been particularly significant. The act requires the analysis of environmental effects, including those on historic properties, to be considered in Federal project planning. While this process gives historic properties some consideration in project planning, there is no statutory guidance on what level of significance qualifies a property for consideration under the National Environmental Policy Act nor is there any clear mandate to identify or evaluate the significance of historic properties that may be affected. The greatest shortcoming of the National Environmental Policy Act is the same one that limits the Advisory Council review process. Once the procedural requirements of environmental assessment are met, the agency is free to proceed with its project regardless of any negative impact on historic properties, as no approval is required to permit the impairment of such properties.

In addition to these project review processes, the current national historic preservation program provides specialized protections for archeological sites. Under the Antiquities Act, the Department of the Interior administers a permit system to regulate the investigation and excavation of archeological sites on Federal land. Sanctions for violation of the permit system, unauthorized excavation, theft of artifacts, and vandalism are also provided for in Federal law. However, lack of adequate policing and reluctance to prosecute violators hampered the effectiveness of these sanctions. The final blow to the sanction aspect of the archeological protection program came when a Federal court ruled the criminal penalties unconstitutional on grounds of vagueness. Although the Department of the Interior is attempting to overcome this flaw by administrative action, it may require an act of Congress to set constitutionally acceptable standards.

A related program protects archeological resources threatened by Federal projects. The Archeological and Historic Preservation Act of 1974 requires that Federal agencies notify the Secretary of the Interior when Federal, federally assisted or federally licensed activities will cause the loss of significant historic or archeological data. The Secretary is then authorized to undertake recovery of the data with project funds, limited to 1 percent of the project costs, or with Department of the Interior funds. The agency is also authorized to undertake data recovery, subject to the same funding limitation. This unique measure recognizes that the value of many archeological sites is for the scientific data they may yield. By authorizing proper recovery of the data, the site's significance is effectively preserved, although the site is physically destroyed. Due to questions regarding the authorization and programing of funds, implementation of this law has been fragmentary.

These programs constitute the protective provisions of Federal law that apply to all Federal agencies. For the most part, they relate either to variations on Federal ownership or the creation of specialized preservation review processes for Federal project planning. While effective to a degree, the existing Federal protective structure is far short of providing the level of protection required by an effective national historic preservation program.

Complementing the Federal protective process are a variety of State and local laws for the protection of historic properties. As may be expected, the scope and quality of these laws vary significantly from jurisdiction to jurisdiction.

At the State level, there has been unprecedented legislative activity since the passage of the National Historic Preservation Act of 1966. While much of this action has been directed at the creation of State administrative structures, a number of States have taken the opportunity to pass protective measures. The most common protective device at the State level is public ownership of significant historic properties. Virtually all States have some form of this protection. Seventeen States have enacted State environmental policy acts, patterned after the Federal law, to require consideration of environmental factors, including historic preservation, in the planning of government sponsored projects. Similar in concept are State land use laws that require the identification and protection of fragile

environmental resources. Notable examples are those of Vermont, Hawaii, and Florida.

Some States, like North Carolina, have emulated the Federal Government in creating a State advisory council on historic preservation to review State activities affecting registered historic sites. A common form of protection for archeological sites is the establishment of State archeological landmarks with permit systems and criminal penalties for vandalism and unauthorized excavation. Arkansas and New Mexico are exemplary in this area, while South Carolina, for one, has extended similar protection to underwater archeological sites. A final protective measure in State law is the authorization of local preservation regulations for the protection of historic districts and privately owned landmarks, exemplified by laws in Massachusetts, Rhode Island, and North Carolina. These laws illustrate the traditional allocation of power to regulate private property to local governments and round out the scope of protective efforts undertaken by the States.

Local protective systems are even more sporadic than State programs. When a local protective system is established, it tends to fall into one of a small number of categories. Local regulation is generally carried out through the police power of a city or county government, frequently in conformance with express State enabling legislation. It is the only level of protection for historic properties that directly regulates the actions of private property owners. Typical provisions of local protective regulation include historic district zoning to regulate demolition, alteration, and new construction in recognized districts. The power to regulate ranges from a delay in demolition, as found in Alexandria, Va., and Charleston, S.C., to the almost complete prohibition of the proposed action without the landmark commission's approval, as in New York City and New Orleans. Similar ordinances exist to regulate changes in the demolition of designated individual landmarks. The degree of control again ranges from delay, as in the District of Columbia, to almost complete prohibition without the commission's approval, as in New York City. These two types of regulatory systems are the backbone of a local protective system for historic properties.

Although the protective aspects of the national historic preservation program are diverse, this phase is the weakest link in the program, particularly at the Federal level. This weakness stems primarily from the total lack of any authority in a preservation agency to mandate decisive and final action to protect a threatened property. Thus, while an agency head may agree with the Advisory Council's recommendation and terminate or alter a project that would adversely affect a historic property—the Secretary of Transportation did this in terminating a major highway project affecting the Vieux Carré Historic District in New Orleans—such protective actions cannot be required.

There is no clear requirement that historic properties be identified and evaluated prior to decisions that may adversely affect them

Existing legislation encourages the consideration of historic properties in the early stages of Federal project planning, but fails to provide any clear, unequivocal mandate for each Federal agency to identify, evaluate, and possibly register historic properties before

the agency reaches a decision on actions that may affect such properties. The lack of a definite responsibility has led to disputes between line agencies and preservation bodies over the agencies' duties to identify and evaluate properties. These disputes have caused project delays, opened the door to litigation by citizen groups, and ultimately have resulted in the loss or impairment of the property, as even when the responsibility is grudgingly admitted, the project is frequently too far along to make an accommodation for the threatened property. Even where Federal agencies acknowledge this responsibility, the absence of specific statutory authorization makes it difficult for the agency to justify the expenditure of Federal project funds for identifying and evaluating historic properties. As a net result Federal agencies all too frequently make decisions without any knowledge of the historic properties directly and indirectly affected.

It is clear that the completion of a comprehensive national inventory of historic properties, leading ultimately to the substantial completion of the National Register, would alleviate this problem by providing a readily usable listing of historic properties in any given area of the United States. Until that time, a clear requirement that Federal agencies identify and evaluate historic properties likely to be affected by their projects will minimize the problems now inherent in the planning process. Means of achieving that goal are discussed in greater detail in chapters II and III of this report. It should be noted that, in "With Heritage So Rich," the Special Committee on Historic Preservation recommended that Congress enact such a requirement in 1966, but its advice has not yet been followed.

The present Federal protective system offers an insufficient choice of protective measures, including any capability to make binding preservation decisions

Federal ownership and an advisory project review system essentially constitute the Federal Government's arsenal against threats to recognized historic properties. While each has its place in the protective process, together they do not provide the Federal Government with adequate tools to deal with the variety of problems encountered in the national historic preservation program. There is no provision for immediate Federal action to halt a threat to a National Register property while a solution is negotiated. There is no regulation of private activity affecting National Register properties. There is no method to correct damage that may occur to a National Register property.

Even the existing protective devices are incomplete. Federal ownership is limited by statute to properties of national significance. The project review processes of the National Environmental Policy Act, the National Historic Preservation Act, and Executive Order 11593 only require that a Federal agency evaluate the impact of its proposed action on an historic property and consult with designated preservation bodies. Once this procedural exercise is performed, there is no prohibition against Federal decisions impairing historic properties. The agency may proceed with its action regardless of the impact on such properties. The construction of the observation tower at Gettysburg illustrates this problem. The Advisory Council strongly opposed the tower and advised the Department of the Interior to take necessary steps to halt its construction. But the Department issued

the necessary permits and took no further action. The tower now pierces Gettysburg's nineteenth-century skyline.

Similarly a recalcitrant Federal agency cannot be compelled to submit to the existing preservation review process by the bodies that administer it. When the General Services Administration commenced demolition of several historic properties around the Winder Building in Washington, D.C., only an injunction issued by a Federal court at the behest of a private citizens group halted the destruction and brought the General Services Administration into the Advisory Council review process. Meanwhile, the historic properties were substantially damaged and the Advisory Council was powerless to stop the destruction. The lack of an administrative process forces recourse to the courts, which is costly to the plaintiffs and to the Government and rarely results in a satisfactory solution.

There are a number of ways to strengthen the Federal protective system. Expanding the basic concept of Federal ownership could provide a means of immediate Government acquisition of threatened historic properties, with adequate compensation to the owner. The property could then be left in Federal ownership if that were determined appropriate or could be returned to private ownership with conditions on its use to insure long-term preservation. Such a system would be not unlike revolving funds that exist in a number of American cities. This alternative was suggested by the Special Committee on Historic Preservation in its recommendations to the congress but was not included in the 1966 legislation.

A second approach, not necessarily an alternative, would be strengthening the project review requirements applied to Federal agencies. Prior approval by an official preservation body, such as the Advisory Council or the National Park Service, could be required for any project that affects a property of National Register caliber and Federal agencies could be prohibited from proceeding on the project until a decision is reached. The preservation body's decision could be final, or an appellate council, representing agencies and preservation interests in much the same way as the present Advisory Council, could be given final authority to weigh competing public interests and enforce its decision. In either case, the preservation body which must give initial approval should be authorized to take summary action to prevent willful acts by Federal agencies, such as the not unusual weekend demolition ploys, from foreclosing preservation alternatives.

An alternative to this external review over agency decisions would be a governmentwide standard similar to section 4f of the Department of Transportation Act. This would require that the head of a Federal agency determine that there are no feasible or prudent alternatives to a proposed action that would impair recognized historic properties. Such a system would supplant the existing preservation review processes. It could be self-policing with citizen recourse to court action to insure compliance with the standard, as section 4f now operates, or a preservation review body, such as the Advisory Council, could supervise agency compliance. This kind of system would require the development of preservation expertise within each agency and would probably require less of an administering bureaucracy, but it might prove to be less supervised and controllable for preservation objectives.

A final aspect of an expanded Federal protection system that merits consideration is the need for correctional measures when a property has been damaged by an illegal action, as in the *Winder Building* case. The inability to require reconstruction usually leaves the result of any project review a foregone conclusion—demolish the building. This does not necessarily have to happen. The Federal Government could be authorized to seize and repair damaged historic properties if threatened with non-Federal action, or, if dealing with Federal agencies, a preservation body could be empowered to require specific performance from the offending agency to repair or reconstruct damaged properties.

One option in strengthening Federal protections for historic properties has not been raised: The extension of Federal controls to include private actions. The extent of these controls could range from a right of first refusal for the Federal Government when any National Register property is offered for sale to regulation of any proposed alteration to, or demolition of, a National Register property by its owner. Because this approach represents such a departure from the traditional historic preservation program and, indeed, from the traditional exercise of the police power by local authorities to regulate land use and development decisions, the Advisory Council believes such an expansion of Federal control over historic properties should only be taken after extremely careful and thorough consideration. Besides raising the question of "Federal zoning," such an extension of the Federal protective process would involve basic constitutional questions and would require a complete revision of the present system for identifying and evaluating historic properties in order to meet due process requirements. It is clear that detailed consideration of these issues is well beyond the scope of this report.

The present Federal preservation system does not relate its protections to the nature of the property, its level of significance, or its relation to its environment

The Special Committee on Historic Preservation recommended that entries on the National Register be placed in categories and that protection be related to the categories, with equal protection afforded each property in a given category. The present program, however, extends its limited protections to all properties that meet the criteria for the National Register, regardless of whether they have been entered for their historical, architectural, archeological, or cultural value and whether they are of national, State, or local significance. Consequently, a threat to Independence Hall would trigger the same formal protection—Advisory Council review—as one at a property determined to be of only local significance. An archeological site, whose significance may lie in the data it yields and not in the site itself, goes through the same protective review processes as an historic district, when the question relates primarily to environmental intrusions. Similarly, current legislation gives no specific recognition to the need to protect the related environment of an historic property.

The current administrative process has introduced a degree of flexibility, recognizing the differences in significance, type of resource, and environmental relationships. However, no guide exists for classifying properties in the current evaluation and registration system, so that there are occasionally inconsistent approaches taken to similar

problems affecting properties of the same category. Also, the degree of flexibility in applying different levels of protection is limited by the simple fact that only one protective device—the comments of the Advisory Council—exists to deal with the wide range of threats to all the types of properties on the National Register. What variation there has been in protective policies has come in the substance of the Advisory Council's comments.

One initial requirement to allow differential application of protections is the establishment of categories in the National Register to reflect the nature and significance of registered historic properties. The means of achieving this are given more detailed treatment in chapter III.

Given more precisely defined categories of significance and property type, the goal of relating protections to the nature and significance of individual properties could be met by restructuring the protective system to create different levels of protection for various classes of resources. For example, historic properties of paramount national significance might be afforded absolute protection from impairment through Federal ownership or stringent Federal controls on potential threats. Properties falling in the next category might be afforded the protection of prior approval for potentially destructive Federal actions. The remaining registered historic properties could then be given the protection of a similar prior approval system, but administered at standards that would allow certain intrusions not acceptable for the higher class. Of course, the establishment of such a system is liable to encourage the feeling that the lowest class of properties are expendable. This factor would have to be given careful attention to insure that the protective system for the bottom category provides sufficiently strong protections.

Similar to relating the extent of protection to the property's level of significance would be relating the type of protection to the nature of the property. For example, the specialized considerations involved in the protection of archeological data call for a protection system that is entirely unsuitable for other kinds of historic properties. Similarly, application of the present Advisory Council review process, which is essentially environmental and concerned with physical, visual, and atmospheric intrusions, affecting historic properties, may be inappropriate for National Register properties classed as objects. These generally possess their significance irrespective of their setting or environment. If the national preservation program expands to include intangible historic and cultural properties, as discussed in chapter III, then relation of protection to the nature of the property will become imperative.

With regard to protecting the environment of historic properties, the Russian system may prove instructive. There, environmental buffer zones are created around historic properties, consistent with the needs of the property, and potentially harmful activities within that zone are regulated. Such a process could be incorporated into the American evaluation and registration system. Alternatively, the present approach employed by the Advisory Council could be adapted to any new protective devices created. This essentially involves defining the effects on historic properties that must be considered by Federal agencies to include alteration of the property's environment or setting. This approach permits more agency discretion than a system that formally defines a buffer zone.

Present protective legislation leaves the role of the public unclear

Public participation in evaluation and registration of historic properties has been discussed in chapter III. Some of the same considerations must be weighed in defining the public role in protection of historic properties. While not legally required, public involvement is desirable in the review of Federal projects affecting historic properties and may become even more so, should more stringent protections be forthcoming. Present legislation makes no provision for public participation, although the Advisory Council's implementing procedures have introduced public involvement in a number of places during the current project review process.

Additional protective legislation might consider incorporating minimum public participation standards, commensurate with the extent and nature of the protection afforded. Any decision in this area should consider both legal requirements resulting from stricter protective measures and more general questions of what is desirable in terms of public policy. Increased public participation may be brought about through the establishment of notice and hearing guidelines or requirements, public representation requirements on preservation bodies, or creation of a public appeal process from decisions affecting historic properties. While care should be taken to avoid impeding the decisionmaking process with excessive formal requirements for public participation, it is clear that the process of balancing preservation needs with other needs on a project-by-project basis is basically one of determining the public interest.

Protective systems below the Federal level vary significantly in quality and do not effectively complement the Federal protective process

State and local laws for protecting historic properties have evolved independently of Federal protective measures and consequently do not adequately complement the Federal protections to form a comprehensive system. Part of this problem obviously stems from the varying levels of protection afforded by States, ranging from poor, as in New Hampshire, to quite good, as in North Carolina. However, even States that have a fairly complete range of State and local protections do not fully coordinate their efforts with the Federal Government. The greatest shortcoming is the failure to give uniform protection to properties listed on the National Register, even though most of those properties were nominated to the National Register by the various States. When the local level is considered, the disparities between jurisdictions are even more pronounced and the failure to give protection to National Register properties more extensive.

As a result, the Federal Government may go to great lengths to meet objections from preservation bodies and by redesigning one of its projects avoid impairment of an historic property. However, in the absence of any effective State or local law, the owner may decide that he wants to redevelop the property and tear it down, or a State-funded project may come along and destroy the property. In either event, Federal law is powerless to prevent such action and the previous Federal investment in preservation, not to mention the property itself, is lost. A particularly distressing new development has been the substitution of State funds to carry out a project originally planned for Federal assistance. The disturbing feature is that frequently general revenue sharing funds from the Federal Government, which are

not covered by Federal historic preservation or environmental requirements, are used to carry out a project that would otherwise require participation in a conventional Federal assistance program, subject to historic preservation review.

Solving this problem essentially requires spurring States and localities to develop protections that are compatible with the overall national historic preservation program. It may be achieved by assisting and encouraging States and localities in legislative efforts. For this purpose, the Advisory Council in 1972 published "Guidelines for State Historic Preservation Legislation," which has been used by a number of States to upgrade their protective programs. A similar guide has been proposed for local preservation regulations. Under contract with the Department of Housing and Urban Development, the National Trust recently began a 2-year project developing "An Advisory Seminar for Local Landmark and Historic District Commissions."

An incentive approach might also be considered. The proposed National Land Use Policy Act sets general standards for State land use legislation and then offers Federal assistance to help States meet the standards. Historic preservation concerns could be addressed more specifically in such proposed legislation or a similar law, dealing only with historic preservation, might be prepared. If mandatory requirements are desired, participation in the Federal preservation grants program could be conditioned on the enactment of acceptable protective measures for the State and its local jurisdictions.

SUMMARY

The protection of historic properties is one of the most basic goals of the national historic preservation program and probably the least successful. The goal of protection is not supported by sufficient regulatory tools at the national, State, or local level to deal effectively with threats to historic properties. However, means of protecting historic properties are available if the commitment to enact them and then vigorously enforce them is forthcoming.

CHAPTER V.—PRESERVING AND ENHANCING HISTORIC PROPERTIES

The ultimate goal of the national historic preservation program is to provide for the continued preservation of recognized historic properties for present and future generations and to relate those properties to the needs of contemporary society. Essentially, this requires actions to preserve properties involving considerations of maintenance and preservation technology, and actions to enhance properties, requiring decisions on interpretation, restoration and use.

Preservation and enhancement dominate the program once properties have been identified, evaluated, registered, and afforded an adequate degree of protection from possible destruction. Preservation and enhancement decisions should guide the use of an historic property and determine how that use will be compatible with the objectives of long-term conservation of a property's historic values and the shorter term relation of those values to society. To fulfill this role, the preservation and enhancement phase of the national program must—

- Provide leadership from the public sector, in philosophy and assistance, for the preservation and enhancement of both publicly and privately owned historic properties;
- Provide adequate public and private assistance and incentives for preservation and enhancement actions, relating assistance and incentives to the significance of the property;
- Provide adequate technical information and assistance for proper preservation actions.

The current process for preservation and enhancement meets some, but not all, of these standards.

THE CURRENT NATIONAL PROGRAM FOR PRESERVATION AND ENHANCEMENT

The present national preservation program has a number of organizations, public and private, engaged in preservation and enhancement activities. Prominent among these is the National Park Service. Most conspicuous of its activities is the administration of nationally significant historic properties across the Nation, such as Independence Hall in Philadelphia and the pre-Columbian cliff dwellings at Mesa Verde National Park in Colorado. About \$100 million was spent in 1974 to preserve and enhance 167 historic properties under the National Park Service's management, an indication of the extent of the Federal commitment to the preservation of outstanding nationally significant properties.

Besides maintaining historical properties, the National Park Service has other vital preservation and enhancement roles to play, including administration of the National Historic Preservation Act grants-in-aid program. Administered on a 50-percent matching basis, these grants are allocated in accordance with approved State historic preservation plans and are available for the acquisition, restoration, preservation, and operation of National Register properties. Since 1966, over \$72

million has been distributed to the States to assist in the preservation of some 1,400 properties. Although the program is budgeted at \$20 million for 1975, it is woefully inadequate to meet the Nation's preservation needs. The National Park Service has estimated that the matching capability of the States in 1975 was close to \$160 million, eight times the amount of Federal funds available.

The National Park Service also has had a leading role in the development of preservation standards and techniques. Executive Order 11593 directed the Secretary of the Interior to establish standards for the preservation, maintenance, restoration, and rehabilitation of federally owned National Register properties. While it is anticipated that these standards will become the measure for all work done under the National Register program, to date they have not been completed. An additional source of National Park Service assistance for preserving and enhancing historic properties is not quantifiable in dollar terms, but is nevertheless important. This is the provision of technical advice and consulting services to Federal agencies and private preservationists. This growing effort has made much of the practical experience obtained by National Park Service personnel available to a large number of preservationists.

Other Federal programs also provide assistance for historic preservation. The National Endowment for the Arts, through its architecture and Environmental arts program, offers planning grants for the development of innovative preservation techniques and concepts. About \$1.8 million was distributed in 1974 by the Endowment for such projects as funding the "Professional Skills Alliance" in Detroit, which brought together architects and residents of the Woodward East area to identify historic properties worth saving and to develop strategies for preservation. Grants are not the only form of Federal financial assistance. The Emergency Home Purchase Assistance Act offers federally insured loans for the rehabilitation of residential properties included in the National Register. Authorized in late 1974, the program is not yet underway.

Not all Federal assistance is financial. The General Services Administration makes surplus historic properties available to State and local governments to use for a variety of purposes, as long as the historic integrity of the property is preserved. The Federal Courts Bldg. in St. Paul, Minn., is an excellent example of this program in action. Surplus to the Federal Government's needs, the building was transferred at no cost to the city of St. Paul, meticulously restored, and adapted to serve as a municipal arts and cultural center.

Besides programs specifically geared to historic preservation, the Federal Government offers numerous opportunities for preservationists to adapt Federal programs directed at other objectives. Outstanding examples include Seattle's use of \$600,000 of general revenue sharing money to provide an historic preservation revolving fund to revitalize its downtown area and the efforts of preservationists in Newburyport, Mass., to redirect Federal urban renewal funds from clearance to rehabilitation and restoration of its historic city center.

The opportunities in other Federal programs are extensive, and some of the more recent laws, such as the Housing and Community Development Act, specifically recognize historic preservation as an acceptable means of achieving program objectives. In fact, the potential for using assistance from other Federal programs is so great

that the National Trust, in its "A Guide to Federal Programs in Historic Preservation," lists over 200 possible sources of Federal support for various kinds of preservation activity.

At the State level, additional public assistance programs for historic preservation are available. These are usually grants programs (often administered in conjunction with the National Register grants program) and State ownership of significant historic properties. Like the National Park Service, many States offer technical assistance to localities and the private sector. Local governmental programs also take the form of offering some financial and technical assistance and preserving particularly important properties through public ownership. However, because historic preservation has to compete with more pressing needs, State and local funding for historic preservation is even more inadequate than Federal resources.

The private sector of the existing national historic preservation program is probably more active in the area of preservation and enhancement than any other phase of the program. Leading these efforts is the National Trust for Historic Preservation. Supported in part by Federal grants-in-aid and in part by membership dues and private contributions, the National Trust manages 16 properties, and administers a consultant services grants program amounting to \$90,000 annually. A particularly innovative program has been the revolving loan fund of \$300,000. A significant contribution to the preservation and enhancement of the Nation's historic properties is the National Trust's program to provide private and public preservationists with accurate and useful technical information on preservation problems. Subjects range from the technical and administrative problems encountered in preserving ghost towns to dealing with building codes when undertaking restoration and adaptive use of historic buildings. The National Trust employs a staff well versed in various preservation disciplines located in Washington and a number of field offices. Information is provided on specific preservation problems, and conferences are frequently held to deal with issues of general concern to preservationists.

Other national private preservation organizations play important roles in the preservation and enhancement of historic properties. The Association for Preservation Technology promotes research and development of technical skills and processes and disseminates this information in its excellent APT Bulletin. The American Institute of Architects maintains a standing national committee on historic resources and a liaison network of State preservation coordinators and preservation contacts in each local AIA chapter. Among other things, the Institute has been active in advocating preservation training for new architects, studying the problem of building codes, and considering professional qualifications for architects engaged in preservation work. A number of other national organizations concerned with particular aspects of preservation provide additional stimuli to the preservation and enhancement of historic properties. These include the Society for Industrial Archeology, the Society of Architectural Historians, the American Association for State and Local History, and the Society for American Archeology.

The private sector also provides a number of preservation funding sources. Most, like the America the Beautiful Fund, are concerned with matters broader than historic preservation but, nevertheless,

provide assistance to preservationists. Large foundations, like Ford and Rockefeller, are supportive of preservation activities. One of the most encouraging new developments has been the increasing availability of corporate gifts for preservation. Notable among these is the Bicentennial program of Bird and Son, Inc., which has made available \$100,000 to fund 115 worthy preservation projects.

Not to be overlooked, but too numerous and diverse to be quantified, are the preservation and enhancement efforts carried out by local, non-profit preservation organizations. Such groups as Don't Tear It Down in Washington, D.C., and the Preservation Alliance in Louisville, Ky., perform several preservation roles—stimulating local interest in historic properties, helping spread preservation expertise, and serving as a local watchdog over actions that negatively affect historic properties.

The preservation and enhancement phase of the national historic preservation program contains diverse and active elements that span both public and private involvement. However, certain obstacles prevent the attainment of the goals for this part of the preservation program.

Direct public assistance is inadequate to meet present and projected needs

As noted, current Federal funding under the National Historic Preservation Act meets only one-eighth of the present State matching capability. As a result, a large number of preservation projects, which the States are not able to fund on a 100-percent basis, never get past the planning stage. This is costly, both in terms of deteriorating historic properties and in money terms, because delayed projects inevitably become more expensive to fund in the future.

Based on estimates of the National Conference of State Historic Preservation Officers and considering the increasing rate of National Register listings, the National Park Service projects that approximately \$400 million annually for the next 10 years is necessary to overcome the backlog of need that has been built up over the previous decades where only limited Federal funding has been available. While this investment would not fulfill the needs of all National Register properties, \$180 million annually would gradually reduce the backlog so that funding could then be reduced to a considerably smaller annual level. The remainder would allow the creation of new funding programs to more adequately meet the funding requirements of an expanding National Register.

While this may appear to be a high price tag for preservation, such an investment would result in the preservation of a large number of National Register properties in the least expensive manner. As covenants insuring preservation are required before grant-in-aid money is given to a property owner, the grant process not only commits an immediate sum for preservation but also stimulates the investment of additional non-Federal capital for preservation over the longer term. The grants system provides reasonable assurance of preservation while frequently allowing the property to remain in productive, private use, contributing to the tax base while avoiding the more costly and cumbersome process of Federal ownership.

Preservation financing suffers from the reduction of preservation funds from other Federal programs. Categorical grants programs, such as those administered by the Department of Housing and Urban

Development for historic preservation, open space, and urban beautification used to be a plentiful source of assistance. However, the termination of these programs and the advent of general revenue sharing and the Housing and Community Development Act, which have made general funds available for a wide range of public projects and community development activities including preservation, have in practice resulted in substantially less Federal money being allocated to historic preservation. Local decisionmakers could use these funds for preservation if they so choose, but in practice preservation generally has a low priority when compared with other local needs such as education, health care, and property tax reduction. Consequently, preservationists have found themselves cut off from former Federal funding sources and, therefore, more dependent on programs strictly labeled as historic preservation.

There are a number of ways of getting public funding to needy historic properties. Using the existing mechanisms of the National Historic Preservation Act grants program, additional appropriations could be funneled to the States through the program's well established channels with only modest increases in administrative overhead. Such a proposal has been made in two measures now being considered by the Congress, S. 327 and H.R. 2763. Although their funding levels, at \$150 million and \$100 million respectively, are not high enough entirely to meet estimated needs, the measures represent a major step forward. An added feature of the bills which has strong philosophical appeal is that revenues for funding the historic preservation program would be derived from the proceeds of Federal oil and gas leases, thereby directing the proceeds from the depletion of one nonrenewable resource to the conservation of another.

Alternatively, new categorical grants programs could be established in various agencies to ensure that a certain amount of funding for housing, transportation, education, and so on, would be available for preservation projects that meet the agency's program goals. While a proliferation of grants programs could make preservation funding more complicated, making preservation money available in broader programs might well encourage innovative preservation solutions to other social problems. For example, adaptive use of historic buildings for health care facilities, elderly and low income housing, and schools might well be encouraged. With current interest in recycling buildings, this approach may have considerable merit. A side benefit would be the broadening of the horizons of many program administrators to appreciate the benefits of preservation and an increase in interagency cooperation on preservation problems.

Present Federal law does not relate funding to the level of significance of an historic property

The current Federal funding program provides the same proportion of Federal assistance to any historic property listed on the National Register, regardless of whether it is of national, State or local significance. Consequently, a property of paramount national importance, such as Monticello, can receive no greater proportion of Federal funding than a modest locally significant building. Conceptually, the problem is closely related to the need for differential protective measures to recognize that some properties are more important than others in terms of their place in the national preservation program. Acknowledging this, the preservation and enhancement

system should require the Federal Government to bear a larger share of the funding for preserving properties of significance to the Nation as a whole, while State and locally significant properties continue to be funded on the existing 50-50 Federal-State basis.

This objective could be achieved by modifying the current grants-in-aid program to allow a higher percentage of Federal funding for nationally significant properties. While 70 percent might be adequate, the Japanese system authorizes 100 percent funding for certain important classes of property. An alternative means could be the establishment of a special supplementary fund for nationally significant properties, administered parallel to the regular grants program much the way the national historic landmark program relates to the National Register program. Funds would be allocated by the Federal Government to nationally important properties independently of normal grant requests originating from the States and in accordance with national priorities.

Certain obstacles in Federal law restrict the use of Federal funds otherwise available for historic preservation

Even where Federal agencies are willing to expend funds for the preservation of historic properties, unnecessary legal restrictions impair their ability to undertake preservation activities. Frequently, there is a lack of specific legislative authorization to use budgeted funds for historic preservation. A frustrating example is the deadlock that presently exists regarding preservation of the Gruber Wagonworks in Pennsylvania, a rare example of a functioning 19th-century workshop. Threatened by a dam being constructed by the Corps of Engineers, the wagonworks has been the subject of extended consultation between the Advisory Council and the corps. Both agree on the desirability and the feasibility of saving the structure. The corps, however, has determined that, because no specific authorization exists in either its enabling legislation or the project legislation for spending money for preserving historic properties, it lacks the necessary authority to allocate otherwise available funds to saving the wagonworks. Consequently, resolution of the problem is at a standstill.

A clear solution to the problem would be a general legislative authorization for Federal agencies to expend appropriated moneys for the preservation of recognized historic properties, without requiring additional specific appropriations or authorizations. Such a proposal, directed to the Secretary of the Army, has been set forth in S. 1707, now pending before the Senate. An alternative would be a special Federal preservation fund for threatened properties, as is now authorized under the Archeological and Historic Preservation Act of 1974 for the salvage of archeological data. However, that same act establishes a general policy that mitigation of adverse effects caused by a Federal project and be paid for out of project funds. The first alternative is more compatible with that policy.

Legal restrictions on the use of Federal funds from different sources on the same project also impede preservation efforts. Such restrictions prevent, for example, combination of Federal funds from a Department of Health, Education, and Welfare program with a National Historic Preservation Act matching grant to adopt a National Register property for community college use. Joint funding is blocked even though the objectives of both programs may be met in an imaginative

manner that puts historic properties to valuable contemporary use, as contemplated by Congress in the 1966 act.

The ultimate irony of this problem is that general revenue sharing funds are considered non-Federal for the protective provisions of the National Historic Preservation Act while being considered Federal for purposes of matching grant-in-aid money under that same law. Consequently, localities can use general revenue sharing funds with impunity to destroy National Register properties, but are barred from using those same funds to preserve such properties if they use any money from the preservation grants program.

The Housing and Community Development Act suggests a solution to this dilemma. That law specifically provides that Federal community development funds may be used as a local matching share in other Federal programs, including preservation grants. Adoption of a similar policy for any Federal money used in conjunction with projects funded under the preservation grants program would greatly facilitate Federal support of preservation projects, particularly innovative ones using multiple sources of public funding. Alternatively, so long as Federal funds are not used to match other Federal funding, it should be possible to combine funding from several Federal programs for preservation activities with multiple benefits.

The present national preservation program offers limited incentives, other than funding, to private preservation activity

While reasonably sophisticated, if inadequately funded, financial assistance programs exist to stimulate private preservation activities, many other Government policies that influence private investment activity not only ignore the encouragement of historic preservation activity but actually work against it. A prominent example is the Government's policy toward the homebuilding industry. Federal housing programs administered by the Department of Housing and Urban Development, Federal monetary policy, the Internal Revenue Code, and Department of Labor job training programs all encourage the construction of new housing and actively deter the rehabilitation of existing housing stock which may be rundown but is often structurally sound and renewable. Such a bias not only is destructive to historic preservation efforts but is contrary to current needs in energy and resource conservation.

Tax policy, especially Federal, is particularly detrimental to historic preservation. Built-in biases toward replacement of existing structures with new construction prove extremely harmful to preservation. Federal tax considerations being so important in many private investment decisions, the ability to take advantage of a tax break will frequently tip the scales away from preservation. The loss of Louis Sullivan's Chicago Stock Exchange was in part occasioned by the strongly favorable tax consequences of redevelopment. Interestingly, the replacement structure has proven, in the developer's words, "uneconomical," even though the Federal tax laws encouraged its construction.

While at the State and local level the situation is not much better, there are a few bright spots in this generally dismal picture.

Several States, such as Virginia, Oregon, North Carolina, and California, have enacted laws to reward private decisions to preserve historic properties by reducing or abating real estate taxes.

Localities, such as New York City and the District of Columbia, have also experimented with tax incentive devices for preservation. Nevertheless, Federal tax policy stands out as the strongest Federal disincentive to private preservation activity and, conversely, the greatest opportunity to promote such activity.

Although this same conclusion was reached 10 years ago by the Special Committee on Historic Preservation, little concrete action has occurred. There is, however, a proposed amendment to the Internal Revenue Code that focuses on the primary disincentive features of Federal tax law. Titled "The Historic Structures Tax Act, S. 667," the bill proposes changes in tax treatment of demolition costs, depreciation on replacement structures and rehabilitated historic structures, and donations of interests in historic properties to redress the most important biases in the present tax laws. Other measures, S. 80 and H.R. 432, deal with the removal of certain negative features of the Federal estate tax laws that often magnify development pressures on historic properties.

Enactment of these laws would be a start on dealing with negative Federal policies regarding historic properties. However, at present, there is not even sufficient knowledge on the full extent of governmental programs and policies that discourage private preservation activities or on the use of other Federal programs to encourage non-Federal preservation efforts. The most appropriate course of action would be a concerted effort to define the extent of this problem and develop possible solutions.

While interest in preservation is growing at a rapid rate, professional training is inadequate to meet demand, and dissemination of technical preservation information is limited

Despite the commendable efforts of the National Park Service, the National Trust and private institutions such as the Association for Preservation Technology, training in preservation skills, and the circulation of already available technical information is lagging behind needs. The increased preservation responsibilities being placed on Federal agencies makes this problem particularly acute in the public preservation program, but similar needs are also felt in the private sector.

Much of the shortcoming in this area could be remedied by a concerted effort of the Federal Government and its private partners at the national level. Utilizing the technical expertise of the National Park Service and such means of dissemination as the National Technical Information Service, a comprehensive Federal technical assistance program could bring needed information on preservation technology to grassroots preservationists. Any such program should, of course, consider using the National Trust as a bridge to the private sector.

Training efforts could also be undertaken. Preservation training for Federal officials should be given priority, either through existing private programs such as those offered by Columbia University and the University of Florida or through a new Federal effort. Preservation training through existing channels, such as graduate school programs and National Trust seminars and conferences, might be intensified to reach more private individuals. Possibly more fruitful in bringing public resources to the problem of preservation training would be using the broad manpower and vocational training programs

administered by the Departments of Labor and Health, Education, and Welfare. The potential benefits would be great while additional investment of public funds would be minimal.

SUMMARY

Structurally, the preservation and enhancement phase of the national historic preservation program has few flaws. It represents the most successful blend of public and private efforts in the program. However, the real shortcoming of the program is the inadequacy of resources, human and financial, to meet the ever increasing demand for preservation assistance.

CONCLUSION: A SUGGESTION FOR ACTION

The preceding review of national efforts to identify, evaluate, register, protect, preserve, and enhance historic properties has revealed a number of shortcomings and inadequacies in the present historic preservation program. In doing so, the report has attempted to focus on the sources of those problems and suggest some actions that might be taken to correct them. This analysis has been directed primarily at substantive problems—inadequacy of laws and funding, need for expertise, inability to take certain necessary actions, and the like. However, in preparing this report, the Advisory Council repeatedly encountered another kind of problem that, although not an inherent feature of any particular program, frequently impeded the success of various preservation programs and efforts. This problem lies in the basically fragmented and sometimes conflicting organization of the national historic preservation program, which often makes it difficult to achieve the objectives of the individual elements of the program.

As noted previously, the current national historic preservation program is the joint result of private actions and a number of legislative enactments that have occurred over the past seventy years, usually in response to the perceived shortcomings of the preceding legislation. Because it has grown in this way, the program has never had the benefit of an attempt to look at how all segments of the preservation field—public and private, National, State and local—relate or how they should relate. Of possibly greater importance is the general absence of any coordination of other public programs, those that are not preservation oriented but greatly affect preservation, with the objectives and operations of the national preservation program.

As a consequence of this lack of coordination, four problems have resulted: Duplication of effort; lack of a coordinating agency; lack of relation to broader national policy; and lack of readiness for possible expansion.

DUPLICATION

Duplication of effort occurs frequently in the Federal preservation program. An example is the concurrent but separate preparation by the General Services Administration and the Department of the Army of technical handbooks for their respective agencies. This is particularly ironic because the Department of the Interior, under Executive Order 11593, is charged with setting Governmentwide standards for the preservation activities covered in these handbooks and is also developing technical standards. Another example of duplication stemming directly from legislative provisions is the specific requirement, in the legislation creating the program, that any Federal surplus property transfer for historic preservation purposes be submitted to the Secretary of the Interior for review as to its effect on the

property's historical values. Under section 106 of the National Historic Preservation Act, that same transfer must also be submitted to the Advisory Council for review and comment. The result is a needlessly two-tiered process in which each tier, as required by law, comments on the same features of the proposal from the same preservation perspective.

LACK OF A COORDINATING AGENCY

While there is no agency or department within the Federal Government mandated to deal exclusively with historic preservation matters, the Department of the Interior is recognized as the lead Federal agency for preservation matters. This responsibility includes management of federally owned historic properties and administration of Federal activities undertaken in partnership with State and local authorities. These responsibilities are thoroughly intertwined with the Department's other responsibilities for land and natural resource management and often involve competing interests. For example, the need to inventory historic properties must be balanced against the need to expedite the development of new energy resources on Federal and non-Federal lands. Because of such conflicting responsibilities and the lack of coordinating authority respecting other agency's programs and policies, coordination of preservation interests with other Federal activities is not as effective as is necessary. The absence of an agency authorized to coordinate competing Federal programs and capable of effectively resolving conflicts seriously impedes the national historic preservation program.

Whenever disputes arise in which Federal agencies seek to evade or pay only lip service to their preservation responsibilities, the only recourse presently available is citizen lawsuits against particularly offensive actions. This remedy, however, is not effective against actions that do not break any particular law, but only distort a law's purpose or frustrate its implementation. The evolution of the Federal-State partnership provides an excellent illustration. In order to decentralize the preservation program and provide an effective local voice in Federal decisions affecting historic properties, the State historic preservation officer system was established. Through it, the States were given an active role in identifying historic properties, evaluating them for National Register entry, setting priorities for funding registered properties, and reaching decisions regarding the impact of proposed Federal projects on them. While the system has worked quite well, there has been an increasing tendency among Federal agencies to place heavier burdens on the State historic preservation officers, particularly in meeting what are essentially the Federal agency's responsibilities in the protective process. The result has been an unwarranted but de facto delegation of Federal agency responsibilities to an increasingly overburdened State official. This situation has frustrated the intent of the National Historic Preservation Act, the National Environmental Policy Act, the Executive Order 11593 that Federal agencies develop their own internal capabilities to deal with historic preservation problems.

The problem is fast approaching the point where some States are actually considering exercising their prerogative to dissolve the voluntary Federal-State partnership and withdraw from the Federal preservation program. The source of these difficulties is a lack of

effective leadership. Another example of this problem can be seen in the Advisory Council's review process under section 106 of the National Historic Preservation Act. When a Federal agency brings a project to the Council for review, the only Federal spokesman is the agency proposing the project. There is no Federal agency responsible for presenting preservation interests and recommendations for the Council to weigh against the views of the agency proposing the project. Problems of this type could be solved if there were some Federal coordinating body that had the authority to define clearly the extent of Federal agency and State responsibilities within the legislative framework of the national preservation program. Unfortunately, there is not. The Department of the Interior, which has delegated its basic preservation responsibilities to the National Park Service, only has limited authority over intergovernmental relationships. Similarly, the Advisory Council is empowered only to recommend measures to coordinate the preservation activities of the Federal and non-Federal sectors. Consequently, the problem only grows worse.

RELATION TO NATIONAL POLICY

The relationship of preservation to broader national policies and programs also suffers from the currently fragmented and relatively powerless organizational structure of the national historic preservation program. While the Department of the Interior, the Advisory Council, and the National Trust all exercise some degree of national leadership over various aspects of the program, there currently exists no recognized spokesman for the overall preservation program. Unlike most foreign preservation efforts, the United States has no effective representative for historic preservation to participate actively in the development of broad national policies on housing, employment, resources, and the like, which have far reaching impact on the course of historic preservation activities.

Efforts to remove the current biases in the Federal tax laws, which constitute possibly the single most important aspect of Federal policy affecting private preservation efforts, clearly illustrate the inability of the present organizational structure to influence broader national policies. Amendments have been proposed for the past 4 years to deal with the most important of these tax problems, but, despite the support and efforts of the Advisory Council, the National Trust, and many concerned private preservationists, the amendments have not even reached the initial stage of legislative consideration. The reflection on the ability of the present organizational structure to provide an effective voice in national policy making is obvious and discouraging.

LACK OF READINESS

The problems discussed above show the inadequacy of the existing organizational structure to deal effectively with the expanded and intensified efforts that have been suggested to meet deficiencies in the identification, evaluation, registration, protection, preservation, and enhancement activities. If expansion and intensification were to begin tomorrow, they would be forced to proceed very slowly.

In view of the four problems outlined above, the Advisory Council believes the time has come to take a comprehensive look at the existing organizational structure with the goal of restructuring it.

Such a review may indicate that a single, national historic preservation agency is desirable to coordinate preservation efforts, review threats to historic properties, establish priorities for funding and assisting preservation efforts, and act as spokesman for the preservation program. Alternatively, it may reveal that a less centralized approach is preferable, one that allows the Nation's preservation efforts to continue to reside in a variety of entities but with stronger central coordinating authority.

Regardless of the approach taken, organization difficulties undeniably exist and must be overcome. In the preceding chapters of this report, the Advisory Council has examined in considerable detail the problems of the various phases of the national program and offered a number of solutions to those problems. What now remains is to assemble the individual parts of an effective preservation program into a smooth functioning whole. This can only be done by providing an effective organizational structure for the national historic preservation program.

APPENDIXES

APPENDIX I

Section 106 of the National Historic
Preservation Act: A legal analysis

SECTION 106 OF THE NATIONAL HISTORIC PRESERVATION ACT

A LEGAL ANALYSIS

The National Historic Preservation Act of 1966 (NHPA) introduced a new process for protecting historic properties from destruction or impairment arising from Federal and federally aided projects. Set forth in section 106 of the act,¹ this process requires that Federal agencies consult with the Advisory Council on Historic Preservation whenever they propose to directly or indirectly carry out a project having an effect on a property listed in the National Register of Historic Places:

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 the National Register. The head of any such Federal agency shall afford the Advisory Council on Historic Preservation a reasonable opportunity to comment with regard to such undertaking.

Since 1966, this process has resulted in a significant number of Federal undertakings being subjected to a careful review to prevent the unnecessary loss of historic properties. During this time, a considerable body of interpretive material has arisen, from judicial and administrative sources. Analysis of section 106 and its subsequent interpretations reveals several concepts, evolving from key words and phrases in the statute, that are central to the implementation of NHPA's review mechanism. Those deserving consideration are the parties subject to the Section 106 process, the definition of an undertaking, the determination of effect, and the nature and effect of Council comments.

1. PARTIES

A threshold determination with regard to the application of section 106 concerns the parties subject to its provisions. The statutory language of NHPA directs an "unequivocal command to any Federal agency" to comply with section 106.² Although the duty of Federal agencies is mandatory, cases interpreting the statute have confirmed that responsibility for complying with section 106 extends no further than Federal agencies.³ Non-Federal bodies have no obligation to take

¹ 16 U.S.C. § 470(f) (1970).

² *Ely v. Velde*, 451 F.2d 1130, 1137, 1 ELR 20612, 20614 (4th Cir. 1971), *aff'd in part* 321 F.Supp. 1088, 1 ELR 20082 (E.D. Va. 1970).

³ *Miltenberger v. Chesapeake & O. Ry.* 450 F.2d 971, 974 (4th Cir. 1971) and *Ely v. Velde*, 451 F.2d 1130, 1139, 1 ELR 20612, 20615 (4th Cir. 1971). But see *Jones v. Lynn*, 477 F.2d 885, 894, 3 ELR 20358, 20361 (1st Cir. 1973) (concurring opinion). (Local public agency acting in partnership with HUD is subject to NEPA). In *Miltenberger* the court found that AMTRAK, although operating with Federal funds, was not a federal agency on account of explicit language in its statute and therefore was not subject to NHPA. In *Ely*, the potential state recipient of federal funds was held to be not subject to NHPA, although the federal agency was required to comply with NHPA prior to granting such funds. A related problem has been the United States Postal Service. Relying on certain provisions of its enabling legislation, the Postal Service has considered its duties under § 106 to be purely voluntary. However, a recent decision indicates this interpretation is incorrect. See *Chelsea Neighborhood Associations v. U.S. Postal Service*, — F. Supp. —, 7 ERC 1707 (S.D.N.Y. 1975), *aff'd* — F. 2d —, 7 ERC 1957 (2nd Cir. 1975).

into account the effect of their project upon a National Register property or to allow the Advisory Council to comment upon that project. However, non-Federal actions in furtherance of an undertaking having some Federal involvement can be and have been enjoined until the Federal agency has complied with NHPA requirements.⁴ It is also possible that the Federal agency, in fulfilling its section 106 obligations, may require the non-Federal recipient or beneficiary to provide information and other assistance in meeting the agency's statutory duties.⁵ Nevertheless, the case law and the intent of Congress make it quite clear that it is the Federal decision-making process that is the target of NHPA, and, absent any such Federal involvement, section 106 is inapplicable.⁶

2. UNDERTAKING

In describing the Federal decisionmaking process covered by NHPA, section 106 extends its review process to Federal, federally assisted, and federally licensed undertakings. To understand the full range of Federal activities thus included, both the nature of the Federal involvement in the action and the nature of the action itself must be examined.

a. The nature of the Federal involvement

NHPA requirements apply whenever a Federal agency exercises some discretionary authority that either directly or indirectly affects a cultural resource. Regarding the relation of the Federal involvement to the undertaking, NHPA speaks in expansive terms. Both the express wording of section 106 and its legislative history negate any interpretation that NHPA is applicable only to activities directly carried out by Federal agencies. Congress intended that the language "direct or indirect jurisdiction over a proposed Federal or federally assisted undertaking" cover any instance where Federal action or assistance advances a project that will affect a National Register property.⁷ Completing the statutory scope of Federal involvement subject to NHPA, the phrase "having authority to license" was added in committee to the original draft bill to make certain that Federal licensing agencies would have to comply with section 106 review procedures.⁸

Subsequent interpretation by the Council, Federal agencies, and the courts has liberally construed this statutory language. In the definition of undertaking set forth in its section 106 compliance procedures, the Council has specified that direct involvement in an undertaking or "the approval, sanction, assistance, or support" of an action carried out by another party subjects a Federal agency to the requirements of section 106.⁹ That the actual undertaking is

⁴ See *Thompson v. Fungate*, 347 F. Supp. 120, 2 ELR 20612 (E.D. Va. 1972). (Virginia highway commissioner enjoined from taking any steps leading to the condemnation of part of Tuckahoe Plantation, a National Register property, for construction of a highway, until Federal highway officials complied with NHPA and NEPA with regard to federal assistance for the highway in question.)

⁵ See "Procedures for the Protection of Historic and Cultural Properties" 36 CFR § 800.6(c)(5)(1974), hereinafter cited as "Procedures."

⁶ House Report No. 8 and Senate Report No. 7.

⁷ House Report No. 7 and Senate Report No. 8.

⁸ House Report No. 8.

⁹ Procedures, 36 C.F.R. § 800.3(c) (1974). See the Council's definition of undertaking quoted in the text accompanying note 24.

carried out by a State or local government agency is immaterial if there has been some Federal involvement contributing to the project.¹⁰

In practice, Federal agencies have interpreted the statutory language and Council procedures to cover a wide range of administrative actions. The nature of this involvement included under section 106 is indicated by the following cases that Federal agencies have referred to the Council: grants for various highway and urban renewal projects; approval of urban renewal building controls and property disposition agreements; transfers of surplus Federal buildings; licenses for powerplants; alterations of buildings by Federal agencies; general development plans; permits for bridge, levee, powerline, and coastal improvement construction; conveyance of a right-of-way over Federal lands; and approval of Federal Housing Administration loan guarantees.¹¹

The underlying concept providing a common characteristic of each administrative action subject to section 106 is that the Federal agency be exercising some discretionary authority in accordance with Federal law. The roots of this doctrine are evident in the legislative history, which indicates that section 106 applies to "those cases where the administrative agencies have real discretion to say yea or nay."¹² Judicial interpretation of section 106 soon echoed these words.

In *Kent County Council for Historic Preservation v. Romney*, citizens challenged the failure of the Department of Housing and Urban Development to comply with section 106 in an urban renewal project where properties had not been listed on the National Register until after HUD's execution of the loan and grant contract.¹³ In its opinion, the court discussed NHPA's requirement that Federal agencies consider the effect of the undertaking and afford the Advisory Council an opportunity to comment "prior to the approval" of any Federal funding assistance, or licensing of an undertaking. Rejecting plaintiff's contention that any installment or individual payment by HUD pursuant to the contract is an "approval" and therefore subject to Section 106 review, the court stated:

The words "prior to approval of the expenditure" are as clear as words can be. Congress did not say "prior to the expenditure"—approval of expenditure and the expenditure itself are two separate and distinct concepts. Approval of expenditure

¹⁰ Thompson v. Fugate, 347 F. Supp. 120, 2 ELR 20612 (E.D. Va. 1972), and Ely v. Velde, 451 F.2d 1130, 1 ELR 20612 (4th Cir. 1971). A subsequent chapter in the protracted Ely litigation provides some insight on the degree of Federal involvement necessary to actuate NHPA protections. Addressing the question of whether substitution of State funds for a project, prison construction, originally scheduled for Federal funds, would be a subterfuge to evade NHPA, the district court stated that, if initial planning and fund allocations placed a "Federal imprimatur" upon the project, the Federal agency just comply with § 106 even though the funding was subsequently withdrawn from the project. To support such a finding, plaintiffs would have to show that Federal funds originally allotted to the prison project were used for another purpose in the State and further show that the effect was releasing of State funds allocated for that other purpose to be used in the prison project. "Such a scheme would constitute indirect use of the funds for a purpose for which they could not have been used directly without meeting the statutory requirements." Ely v. Velde.—F. Supp.—(E.D. Va., Dec. 21, 1972). See also, Ely v. Velde, 356 F. Supp. 729 (E.D. Va. 1973). Although the District Court later found that plaintiffs were unable to meet the burden of proof, Ely v. Velde, 363 F. Supp. 277, 3 ELR 20764 (E.D. Va. 1973), the Court of Appeals held that the State could not retain the money originally allocated to the prison while constructing the facility with State funds. "While the center itself is not branded as Federal, the LEAA funds allocated for its construction were impressed with a commitment to preserve the environment of Green Springs. Consequently, the State cannot retain the fruits of Federal partnership in this venture by transferring funds to other projects." Ely v. Velde, 497 F.2d 252 (4th Cir. 1974).

¹¹ See generally Advisory Council on Historic Preservation, Digest of Cases (1973) (hereinafter cited as Digest) (available from the Advisory Council on Historic Preservation).

¹² Hearings on S. 3035, H. R. 13491, and Related Bills Before the House Committee on Interior and Insular Affairs, 89 Cong., 2d Sess. (1966), in J. Lambe, Legislative History of the Historic Preservation Act of 1966 at 99 (1967) (hereinafter cited as House Hearings).

¹³ 304 F. Supp. 885 (W.D. Mich. 1969). In a conventional urban renewal project, HUD exercises no further discretionary authority over the execution of the project after signing the loan and grant contract, unless there is an amendment to the plan or some other departure from the agreement. In *Kent County*, no such subsequent changes were alleged.

requires a judgment. The actual expenditure is a clerical, ministerial or mechanical act.¹⁴

The court concluded that, as HUD's execution of the loan and grant contract constituted the agency approval and as that approval predated listing of the affected properties on the National Register, HUD was under no duty to comply with section 106.¹⁵ In effect, the court found that HUD's execution of a ministerial or clerical action was not the kind of discretionary authority envisioned under NHPA and therefore not subject to section 106 review.

While *Kent County* firmly established the requirement that a Federal agency be exercising discretionary authority to activate section 106, subsequent litigation indicates to what lengths the courts will go in order to find agency discretion. In *Ely v. Velde*, the fourth circuit looked beyond the actual undertaking in question to find some administrative exercise of discretionary authority that required compliance with section 106.¹⁶

In *Ely*, the Law Enforcement Assistance Administration (LEAA) was administering a program of block grants to the States for law enforcement purposes under the Safe Streets Act of 1969.¹⁷ That statute directs that LEAA "shall make grants" to a State when the State has on file with LEAA an approved comprehensive law enforcement plan. The plaintiffs contended that LEAA had failed to comply with NHPA when making such a grant to the State of Virginia for prison construction which would adversely affect several National Register properties. Rejecting this contention, the district court adopted LEAA's position that Congress, in the mandatory language of the Safe Streets Act, had removed any discretion on the part of LEAA to deny grants on the basis of NHPA.¹⁸

The court of appeals reversed. Noting that LEAA had set forth requirements for compliance with three other Federal statutes to be included in the State comprehensive plan, the court held that NHPA must also be considered.¹⁹ In effect, the court found that LEAA was exercising discretionary authority in the approval of State comprehensive plans and, at that point, compliance with section 106 was required. The mandatory language of the Safe Streets Act did not become operative until the condition precedent, LEAA's approval of a State comprehensive plan, had occurred.

The *Ely* case represents the expansive scope of the concept of discretionary authority requiring compliance with national environmental

¹⁴ *Id.*, at 888.

¹⁵ *Id.* An important corollary of the discretionary action concept articulated in *Kent County* is the question of timing with regard to the entry of the property on the National Register and the agency approval. The underlying assumption of *Kent County* is that a duty to comply with NHPA exists only when the affected property is actually listed on the Register prior to the agency approval. This was affirmed in *South Hill Neighborhood Association v. Romney*, 421 F.2d 454 (6th Cir. 1969) cert. denied, 397 U.S. 1095 (1970). "Rumors of buildings with historic significance is (*sic*) not enough to require HUD to take this action (comply with § 106). Placement on the Register is what is required." *Id.* at 462. However, should the timing requirement be satisfied, the duty to comply with NHPA becomes mandatory. A project undertaken without NHPA compliance will be enjoined and no further action may be taken in furtherance of the authority until the agency has complied with § 106. *Berkson v. Morton*, 2 ELR 20659 (D. Md. 1971).

¹⁶ 451 F.2d 1130, 1 ELR 20612 (4th Cir. 1971).

¹⁷ 42 U.S.C. § 3722 (1970).

¹⁸ Referring to LEAA's duties under the Safe Streets Act, the district court said: "The terms of the statute leave no discretion to the administration, and it cannot be said that they acted unreasonably in their compliance with those terms, while at the same time finding it unnecessary to look beyond those terms for provisions of other acts that might contradict those same terms."

¹⁹ 451 F.2d at 1137, 1 ELR at 20614. Like NHPA, none of the three statutes, the Delinquency Prevention and Control Act of 1968, the Demonstration Cities and Metropolitan Development Act of 1966, nor the Highway Safety Act of 1966, was mentioned in the Safe Streets Act. Compliance with the Civil Rights Act of 1964, also not mentioned, was further required of grantees and their contractors and subgrantees.

and preservation policy. In *Ely*, the actual undertaking being challenged was the nondiscretionary granting of funds. The court looked one step back in the process to find an agency approval preliminary to the actual grant and, finding such action that was prerequisite to the grant although not directly affecting its administration, held that action subject to NHPA.²⁰

The Advisory Council and Federal agencies have interpreted the discretionary authority doctrine to embrace a broad range of administrative actions, as indicated by the cases brought before the Council.²¹ This subsequent administration of the section 106 review process has demonstrated that the rationale for the discretionary authority doctrine is well founded. To provide an opportunity for the Council's comments to be implemented in an agency action, the administrative agency must retain sufficient control over the undertaking to be able to modify its impact on the affected property.²² Where such agency control is present, the agency can require alterations to fulfill the Council's recommendations, even when the actual execution of the undertaking is conducted by a private party or an agency of State or local government.

b. The nature of the action

Closely related to the concept of the Federal involvement in an undertaking is the nature of the resulting action that has an effect upon a National Register property. While the legislative history of section 106 indicates a primary concern with activities that could be categorized as projects, the statute uses the broader term "undertaking."²³ Subsequent interpretation of the term by the Advisory Council provides a more concrete delineation of "undertaking." In its section 106 compliance procedures, the Council has set forth the following definition:

Undertaking means any Federal action, activity or program or the approval, sanction, assistance, or support of any other action, activity, or program . . .²⁴

²⁰ See subsequent litigation discussed at note 10 *supra*.

²¹ See generally DIGEST. One major area of exception, consistent with the mechanical act formula applied in *Kent County*, is where Congress, by specifically directing that a certain project be undertaken in a particular manner, has effectively removed any discretion from the agency carrying out the project even though the agency otherwise has complete responsibility for and control of the project's execution. See *House Hearings*, quoted in J. LAMBE, *supra* note 12 at 98-101. However, the congressional directive removing discretionary authority must be specific. See *Ely v. Velde*, 451 F. 2d 1130, 1 ELR 20612 (4th Cir. 1971) and D.C. Federation of Civic Ass'n v. Volpe, 459 F. 2d 1231, 2 ELR 20092 (D.C. Cir. 1972). (Statute directing Three Sisters Bridge to be constructed "notwithstanding any other provision of the law or court decision or administrative action to the contrary" held not to exempt Secretary of Transportation from compliance with § 106 of NHPA, a "Federal law of general application.")

²² The Advisory Council's procedures recognize this. The Council directs Federal agencies to consider NHPA prior to any decision on an undertaking and defines "decision" to mean "the exercise of agency authority at any stage of an undertaking where alterations might be made in the undertaking to modify its impact upon cultural properties." 36 C.F.R. § 800.3(g) (1974). This concept is important with regard to NHPA's application to ongoing projects. Cf. *Businessmen Affected Severely by the Yearly Action Plans v. D.C. City Council*, 339 F. Supp. 793, 2 ELR 20237 (D. D.C. 1972) (NEPA requires consideration of environmental impacts at every important stage in the decisionmaking process) and *Jones v. Lynn*, 477 F. 2d 885, 3 ELR 20358 (1st Cir. 1973) (application of NEPA to HUD's execution of an urban renewal project dependent on whether "HUD retained any significant discretionary powers as might permit it to effect an alteration of building or design plans to enhance the urban living environment"); Council on Environmental Quality's Guidelines for NEPA Compliance: "The action causing the impact must also be one where there is sufficient Federal control and responsibility to constitute 'Federal action' in contrast to cases where such Federal control and responsibility are not present . . ." 40 C.F.R. § 1500.6(c) (1973).

²³ 16 U.S.C. § 470f (1970).

²⁴ Procedures § 800.3(c) emphasis added. The procedures specify certain activities subject to § 106:

(1) Recommendations or favorable reports relating to legislation, including requests for appropriations. The requirement for following these procedures applies to both: Agency recommendations on their own proposals for legislation and agency reports on legislation initiated elsewhere. In the latter case only the agency which has primary responsibility for the subject matter involved will comply with these procedures.

(2) New and continuing projects and program activities: directly undertaken by Federal agencies; or supported in whole or in part through Federal contracts, grants, subsidies, loans, or other forms of funding assistance; or involving a Federal lease, permit, license, certificate, or other entitlement for use.

(3) The making, modification, or establishment of regulations, rules, procedures, and policy.

Cf. 40 C.F.R. § 1500.5 (1973) (CEQ's definition of actions covered by NEPA).

The broad scope of this definition is noteworthy. The key is found in the use of the word "any" recognized in *Ely* as indicative of an "unequivocal command."²⁵ Unlike the National Environmental Policy Act, NHPA extends no discretion to Federal agencies to determine whether the activity in question meets a certain threshold of significance.²⁶ The lack of a qualifying word, such as "major," for actions covered by NHPA is characteristic of both the statute and the procedures. The directive is quite clear that any action in which there is a Federal involvement is subject to the section 106 process, if that action affects a National Register property.

In their interpretation of the procedures, Federal agencies have adhered to this broad concept of an undertaking. In addition to those noted in the discussion of Federal involvement, examples of actions that have been brought to the Council for review under section 106 include dam construction; airport runway extension; public land use management plan; restoration and adaptive use of historic properties; national park master plan; highway relocation; low-income housing project; construction of a radar site; pipeline construction; and river dredging and channelization.²⁷

3. EFFECT ON NATIONAL REGISTER PROPERTY

Once Federal involvement in an undertaking has been established, the Federal agency must determine whether the undertaking has an effect on a National Register property.²⁸ NHPA and its legislative history are silent on what constitutes such an effect. To provide guidance in this determination, the advisory council has established its criteria for effect:

A federally financed or licensed undertaking shall be considered to have an effect on a National Register listing (districts, sites, buildings, structures, and objects, including their settings) when any condition of the undertaking causes or may cause any change in the quality of the historical, architectural, archeological, or cultural character that qualified the property under the National Register criteria for listing in the National Register.²⁹

Similar to the scope of undertaking, the breadth of this definition is notable. Not restrained by any statutory requirement of "significant effect" or similar language, the criteria cover any alteration, actual or potential, that an undertaking may bring about in the characteristics that provide the property's cultural significance.³⁰ Effect is not limited to a physical invasion of the property nor is it limited to the boundaries of the property itself. The council's interpretation of effect reflects the intent to preserve the relationship of cultural resources to their environs, recognizing that such resources cannot be viewed as entities isolated from their surroundings.

²⁵ 451 F.2d at 1137, 1 ELR at 20614. The district court found, and the court of appeals concurred, that § 106 of NHPA "speak(s) in unequivocal terms," 321 F. Supp. at 1093, 1 ELR 20084, 451 F.2d 1137, n.21, 1 ELR 20614 n.21.

²⁶ See 42 U.S.C. § 4332(2)(A) (1970), ELR 41010. NEPA requires an environmental impact statement only of "major Federal actions significantly affecting the quality of the human environment." *Id.* § 4332(2)(C). CEQ has recognized that "the words 'major' and 'significantly' are intended to imply thresholds of importance and impact that must be met before a statement is required." 40 C.F.R. §1500.6(c) (1973).

²⁷ See Advisory Council on Historic Preservation Newsletter, September 1973, 9-47, and see generally Digest.

²⁸ The advisory council's §106 procedures charge the Federal agency with responsibility for determining effect. Procedures §800.4(b).

²⁹ Procedures §800.8.

³⁰ See note 26 *supra* and 40 C.F.R. § 1500.6(1973) (Identification of major actions significantly affecting environment under NEPA). Besides having no threshold of quantitative significance to meet, an effect may qualitatively be either beneficial or adverse.

It should be noted that the relationship of the undertaking to the effect need not be one of immediate causation. The criteria specify that if the undertaking causes or may cause a change in the property's significant qualities, it is considered to have an effect on the property. Where Federal involvement forms an integral link in the chain of events that ultimately create an effect upon a National Register property, NHPA requires that the administrative agency comply with the Section 106 review process.³¹ Examples of cases brought before the council on this basis include the proposed transfer by Federal agencies of the San Francisco Mint and Old Post Office in St. Louis to local authorities for ultimate demolition, and the granting of a right-of-way by the National Park Service over the Gettysburg battlefield to a private developer which would assist the construction of a 300-foot observation tower adjacent to the battlefield.³² These cases evidence the council's interpretation that, even when the Federal action was not in itself adverse, the nature of the ultimate effect made possible by the Federal involvement is sufficient to establish the necessary causal relationship to activate Section 106.

Should an effect on a National Register property be established, then NHPA requires the agency to afford the advisory council a reasonable opportunity to comment.³³ The advisory council procedures set forth the manner in which a Federal agency fulfills this statutory obligation.

In consultation with the appropriate State historic preservation officer, the responsible agency official must determine whether the effect on the National Register property is adverse.³⁴ To evaluate that adversity, the procedures set forth further criteria:

Generally, adverse effects occur under conditions which include but are not limited to:

- a. destruction or alteration of all or part of a property;
- b. isolation from or alteration of its surrounding environment;
- c. introduction of visual, audible, or atmospheric elements that are out of character with the property and its setting;
- d. transfer or sale of a federally owned property without adequate conditions or restrictions regarding preservation, maintenance, or use; and
- e. neglect of a property resulting in its deterioration or destruction.³⁵

The wording of these criteria is necessarily broad. The nature of detrimental effects on cultural properties is usually complex and consequently resists classification in clearly defined categories. These criteria are intended as a guide for evaluating the quality of an under-

³¹ CEQ also recognizes this kind of indirect effect under NEPA:

Secondary or indirect, as well as primary or direct, consequences for the environment should be included in the analysis. Many major Federal actions, in particular those that involve the construction or licensing of infrastructure investments (e.g., highways, airports, sewer systems, water resource projects, etc.), stimulate or induce secondary effects in the form of associated investments and changed patterns of social and economic activities. Such secondary effects, through their impacts on existing community facilities and activities, through inducing new facilities and activities, or through changes in natural conditions, may often be even more substantial than the primary effects of the original action itself.

⁴⁰ C.F.R. §1500.8(a)(3)(ii)(1973).

³² Digest 9, 13, and 29.

³³ The original bill, S. 3035, contained a 60-day waiting period before an agency could proceed with an undertaking after requesting council comments. This provision was removed due to objections from the Bureau of the Budget that it might result in unneeded delays and the "reasonable opportunity" language was substituted. House report 8, 14.

³⁴ Procedures, § 800.4(c).

³⁵ Procedures § 800.9. These last two criteria were added primarily for the purpose of compliance with § 2(b) of Executive Order 11593.

taking's effect rather than as precise definitions. As a result in the application of these criteria, quite often the effect of a single undertaking upon a National Register property will fall within two or even all three of the conditions set forth.

Section (a) covers direct physical effects occurring within the boundaries of a property. Within this category would be such effects as demolition, interior or exterior modifications, and virtually any construction involving the property itself. The impact on the property may range from total destruction to restoration and rehabilitation for adaptive use. Examples of section 106 cases involving this kind of effects include the proposed demolition of the San Francisco Mint and the Old Post Office in St. Louis, the construction of a high-rise apartment building in the Savannah Historic District, the filling of the lock chamber for highway construction at Plaquemine lock, Louisiana, and the construction of electric transmission lines within the Honey Hollow watershed in Pennsylvania.³⁶

Section (b) extends the area of an undertaking's potential impact to the property's surroundings. Any modification of the environment of a National Register property or any impairment of the property's traditional relationship to its environment may constitute an adverse effect under this standard. It should be noted that the extent of the surrounding area relevant to the property's significance varies with the nature of the individual property and its location.³⁷ Construction of a 44-story building in the immediate vicinity of Faneuil Hall in an area of downtown Boston already saturated with buildings of similar height presents an effect not nearly as adverse as the erection of a 300-foot steel observation tower in the 19th-century pastoral environment of the Gettysburg battlefield.³⁸ Given this factor of variability, the Council has considered, in addition to the *Boston* and *Gettysburg* cases, the proposed construction of a powerplant in the traditionally natural environment of Pennsbury Manor and the proposed construction of an elevated expressway that would have severed the traditional relationship of New Orleans' Vieux Carre with the Mississippi River to constitute adverse effects.³⁹

Section (c) presents the broadest range of adverse effects and hence the greatest potential for invoking Council review under section 106. All the indirect and often subtle intrusions that degrade a cultural property and its immediate environs fall into this category. Such effects need not involve any actual physical impairment of the property, although actions producing direct effect within the property's boundaries under sections (a) and (b) may also adversely affect that property by introducing out of character visual, audible, or atmospheric effects. Examples of cases before the Council that have presented adverse effects under section (c) include the construction of massive cooling towers within the view from the Saratoga battlefield and Pennsbury Manor, the infusion of traffic into the Charleston Historic District from a proposed bridge, and the construction of new buildings architecturally incompatible, in terms of mass and scale,

³⁶ Digest 9, 13, 17, 33, 14, and 19.

³⁷ CEQ recognizes this principle with regard to environmental impacts under NEPA: "The significance of a proposed action may also vary with the setting, with the result that an action that would have little impact in an urban area may be significant in a rural setting or vice versa." 40 C.F.R. § 1500.6(b) (1973).

³⁸ Digest 27 and 29.

³⁹ Id. at 11 and 5.

in the Savannah and Newburyport Historic Districts.⁴⁰ Other undertakings that have created adverse effects as determined under both section (c) and other criteria include the New Orleans expressway with its visual and audible impact on the Vieux Carre and the visual impact and shadow cast upon Faneuil Hall in Boston by a high-rise office building.⁴¹

Sections (d) and (e) were added to deal specifically with the questions of historic properties owned and maintained by the Federal Government. Section (d) covers the transfer of historic buildings to non-Federal ownership. It is intended to insure that surplus property transfers are subjected to Council review. Similarly, the recurring problem of Federal agencies neglecting the maintenance of National Register properties in their ownership led to the adoption of section (e). Recently, the Council reviewed the case of the Dutton Hotel, a 19th-century stage stop in California, which was rapidly deteriorating in the absence of proper maintenance.

The broad interpretation given the concept of adverse effect by the Council and Federal agencies is a key element in the extent of protection provided National Register properties under NHPA. It represents a sophisticated understanding of the complex factors underlying the significance of cultural resources and an effort to incorporate that understanding into the protective process. The development of the adverse effect concept evidences a substantial departure from traditional Federal preservation efforts through ownership and an adoption of the environmental impact philosophy set forth in the National Environmental Policy Act (NEPA).⁴²

Procedurally, the determination of adversity is made through joint consultation of the responsible agency official and the State historic preservation officer, using the Council's criteria. If those parties agree that the effect is not adverse, the agency official submits this determination, along with supporting documentation, to the Executive Director of the Council for review. Unless the Executive Director objects, the Federal agency may proceed with the undertaking.⁴³

Should any of the consulting parties determine that the effect of the undertaking is adverse, the consultation process is continued to seek a feasible and prudent alternative to remove or satisfactorily mitigate the adverse effect.⁴⁴ An agreed upon alternative achieving either objective is embodied in a memorandum of agreement which is executed by the three parties and ratified by the Chairman.⁴⁵ The approved memorandum of agreement constitutes the comments of the Council.⁴⁶ Adherence to the terms of the memorandum by the Federal agency satisfies NHPA's requirement that the agency take into account the effect of its undertaking.⁴⁷ If no acceptable alternative

⁴⁰ Id. at 14, 19, 3, 11, 18, 17, and 31.

⁴¹ Id. at 5 and 27.

⁴² See generally 42 U.S.C. §§ 4321 et seq. (1970), ELR 41009 and 40 C.F.R. § 1500 (1973).

⁴³ Procedures § 800.4(d)(4).

⁴⁴ Procedures § 800.5. The Council uses the same feasible and prudent standard for the consideration of alternatives as utilized under § 4(f) of the Department of Transportation Act, 49 U.S.C. § 1653(f) (1970). See generally O. Gray, *infra*, note 53, at 368-73. "Feasible" snacks of technical considerations, "prudent" of the entire range of concerns relevant to wisdom." Id. at 369.

⁴⁵ Procedures § 800.5.

⁴⁶ Procedures § 800.6(a).

⁴⁷ 16 U.S.C. § 470f (1970). In accordance with CEQ's NEPA Guidelines, the memorandum of agreement should be included in any environmental impact statement prepared for the undertaking, 40 C.F.R. §§ 1500.8(b) and 1500.9(a) (1973).

is found, the Advisory Council considers the undertaking at a meeting of its full membership. The Council then forwards its written comments to the head of the Federal agency involved in the undertaking.⁴⁸

4. EFFECT OF THE COUNCIL'S COMMENTS

Once the Federal agency has received the comments of the Council, in the form of either an executed memorandum of agreement or a statement from the Council, it must take into account the effect of the undertaking upon the National Register property. While NHPA and its legislative history indicate that the Council's role is purely advisory, and it possesses no veto power over agency actions, Congress clearly intended that section 106 provide a "meaningful review" of Federal undertakings affecting cultural properties listed on the National Register.⁴⁹ Just what would constitute a "meaningful review" was not specified in the statute nor has there subsequently been any definitive treatment of this question by the courts.

While no firm rule exists on the consideration that an administrative agency must give to the Council's section 106 comments, the fourth circuit did provide some guidance in *Ely*. Directing the Law Enforcement Assistance Administration (LEAA) to comply with both NHPA and NEPA, the court set forth the following guidelines:

If the LEAA, after following the precepts of NHPA and NEPA, makes a good faith judgment as to the consequences, courts have no further role to play. We note, however, that a Federal agency obligated to take into account the values NHPA and NEPA seek to safeguard may not evade that obligation by keeping its thought processes under wraps. Discretion to decide does not include a right to act perfunctorily or arbitrarily. That is the antithesis of discretion. The agency must not only observe the prescribed procedural requirements and actually take account of the factors specified, but it must also make a sufficiently detailed disclosure so that in the event of a later challenge to the agency's procedure, the courts will not be left to guess whether the requirements of NHPA and NEPA have been obeyed.⁵⁰

The court's treatment of NHPA and NEPA compliance as coextensive is notable.⁵¹ Although no other cases have directly addressed this point, the *Ely* formulation of NHPA and NEPA compliance in the same terms may provide a basis for subsequent application of court-developed NEPA compliance standards to NHPA cases.⁵² Certainly the similarity in the objectives of the two statutes offers a sound basis, both in logic and policy, for using NEPA doctrines as guidance in the interpretation of NHPA.

⁴⁸ Procedures § 800.6. An account of an early § 106 case, involving the Convent of the Incarnate Word in Brownsville, Tex., 49 Tex. L. Rev. 267, 307-15 (1971). As this case was reviewed under earlier procedures than are now in effect, it should be considered accordingly.

⁴⁹ Senate Report No. 8. The original bill was amended by the House committee to reduce the duties of the Advisory Council for conformance with its advisory purposes and to omit provisions relating to formal hearings under oath, compulsory process, and other powers not usually granted an advisory body, House Report 8.

⁵⁰ 451 F.2d at 1138, 1 ELR at 20615 (emphasis added). See also, *Commonwealth of Pennsylvania v. Morton*, 381 F. Supp. 293 (D.D.C. 1974). Compare *Calvert Cliffs' Coordinating Comm. v. AEC*, 449 F.2d 1109, 1114, 1 ELR 20346, 20349 (D.C. Cir 1971).

⁵¹ See also *Thompson v. Fugate*, 347 F. Supp. 120, 2 ELR 20612 (E.D. Va. 1972).

⁵² For a discussion of the current state of NEPA compliance doctrines, see E. Dolgin and T. Guilbert, *Federal Environmental Law*, 238-419.

Although the extent of NHPA's inherent requirement of substantial compliance with Council comments is uncertain, other statutory obligations serve to add weight to the Council comments in the agency decisionmaking process. Most significant of these is the National Environmental Policy Act.⁵³ NEPA directs Federal agencies to obtain comment from other agencies having jurisdiction or special expertise over a particular form of environmental impact when preparing an environmental impact statement required under section 102(2)(C).⁵⁴ The Council on Environmental Quality, in its latest interpretation of NEPA, notes that this requirement is in addition to "any specific statutory obligation of any Federal agency to coordinate or consult with any other Federal or State agency," such as under NHPA.⁵⁵ This NEPA charge places an additional duty, beyond that inherent in section 106, to seek and consider the comments of the Advisory Council regarding the impact of an undertaking upon cultural resources.

Procedurally NEPA adds weight to the Council's comments by requiring that draft environmental impact statements indicate reports, studies, and information considered by the Agency including "reports of consulting agencies . . . under the National Historic Preservation Act of 1966."⁵⁶ This explicit inclusion of the section 106 comments within the broader environmental impact statement required by NEPA provides an opportunity to lend the weight of court-developed NEPA compliance doctrines to the Council's comments.⁵⁷ An additional benefit to the section 106 process lies in the practical aspect of publicizing the impact upon cultural resources as one factor of a project's overall environmental impact evidenced by the NEPA statement.⁵⁸

Apart from the question of legal effect of the comments, Agency compliance with the Council's advice has been exceptional. The most frequent outcome of a section 106 case is the execution of a memorandum of agreement, representing a negotiated solution satisfactory to the Advisory Council, the Federal Agency, and the State historic preservation officer.⁵⁹ By its very nature, resolution in this manner

⁵³ 42 U.S.C. §§ 4321 et seq. (1970), E.L.R. 41009. Section 4(f) of the Department of Transportation Act, 49 U.S.C. § 1653(f) (1970), also provides a vehicle for the enforcement of Council comments. That provision requires the secretary of Transportation to make a "special effort . . . to preserve the natural beauty of the countryside and public park and recreation lands, wildlife and waterfowl refuges, and historic sites." *Id.* Prof. Gray suggests that the Council's comments provide a benchmark with which the courts and the public can measure the secretary's "special effort." In such cases, the Council's comments may have the effect of placing the burden of persuasion upon the secretary that he has made the required "special effort" if the comments are disregarded, whereas he would otherwise have a favorable presumption of fulfilling that charge in the absence of the Council's comments. O. Gray, "Section 4(f) of the Department of Transportation Act," 32 Md.L. Rev. 325, 365-68.

⁵⁴ Prior to making any detailed statement (environmental impact statement), the responsible Federal official shall consult with and obtain the comments of any Federal agency which has jurisdiction by law or special expertise with respect to any environmental impact involved. 42 U.S.C. § 4332(2)(C) (1970), E.L.R. 41010.

⁵⁵ 40 C.F.R. § 1500.9(a)(1) (1973).

⁵⁶ 40 C.F.R. § 1500.8(b) (1973). These CEQ guidelines go on to say that, where possible, requirements under these various laws should be combined to yield a single document that comprehensively sets forth the full range of an undertaking's environmental impact, 40 C.F.R. § 1509.9(a) (1973). See also Procedures, § 800.2.

⁵⁷ See discussion of NEPA in E. Dolgin and T. Guilbert, *supra* note 52, 238-419.

⁵⁸ As Professor Gray notes with regard to transportation projects, the § 106 review process provides public financing and manpower for a thorough study of the effects of an undertaking and alternatives to it. The results may then be relied upon to meet the contentions of the sponsors of the undertaking. O. Gray, *supra* note 53, at 365-66. Comments of the Council have been used by parties in *Hudson Preservation Conf. v. FPC*, 453 F.2d 463, 1 E.L.R. 20496 (2d Cir. 1971) (suit under Federal Power Act, 16 U.S.C. § 825-1(b) (1964) and *Commonwealth v. Nat'l Gettysburg Battlefield Tower*, 2 E.L.R. 20517 (C. P. Adams Co., Penn. 1972) (suit under Penn. Const. art. 1, § 1).

⁵⁹ Since the Council initiated its review of Federal undertakings in 1967, over 400 cases have been satisfactorily settled without resort to formal review by the full Council. Digest at i.

presents little difficulty in its subsequent enforcement.⁶⁰ Adherence to Council comments issued after consideration of an undertaking at a Council meeting has also been quite effective. In the 26 cases considered at meetings of the full Council, all but 1 have resulted in satisfactory Agency compliance with the Council's comments.⁶¹

The outstanding record of the Council is attributable to its organization and composition. The Cabinet-level status of the Council is an important factor in providing weight to its decisions.⁶² Furthermore, presence of the major impact agencies of the Federal Government serves to promote the resolution of often difficult controversies in a manner that accommodates the objectives of cultural resources preservation with the legitimate project goals of the Federal agency. In this manner, the Council's success in protecting cultural resources has been characterized by a spirit of cooperation rather than confrontation with the Federal agencies whose projects it reviews.

⁶⁰ Although the situation has yet to arise, presumably breach of a memorandum of agreement would subject the undertaking to further review by the Council, leading to consideration of the undertaking at a Council meeting as in the case where the consulting parties are unable to reach agreement under the § 106 procedures. See Procedures § 800.5(h).

⁶¹ See generally Digest.

⁶² The Advisory Council's comments may also have some psychological influence upon a Cabinet member in that they represent the views of a body in which other Cabinet members nominally sit. The most important case, for instance, in which the Advisory Council's comments led to the cancellation of a project concerned a proposed Riverfront Expressway through the New Orleans Vieux Carre. After reviewing comments of the Advisory Council, Secretary Volpe ordered the highway removed from the interstate system because the highway would have seriously impaired the historic quality of New Orleans' famed French Quarter. DOT press release 16569 (July 9, 1969). During the DOT study of the Advisory Council's comments, Secretary Volpe received letters from George Romney, Secretary of Housing and Urban Development, May 21, 1969, and from Russell E. Train, Acting Secretary of the Interior, June 12, 1969, strongly endorsing the Advisory Council's comments. O. Gray, *supra* note 83, at 364 n. 83.

APPENDIX II

Great Britain



GREAT BRITAIN

IDENTIFICATION

Great Britain maintains a twofold system of national protective inventory: (1) scheduling of ancient monuments, and (2) listing of historic buildings. In general, all known ancient monuments of special importance have been included, but the process is of course a continuing one as further discoveries are made or later monuments qualify. The whole country has been completely surveyed once for the purposes of listing buildings of special historic and architectural interest. Over 200,000 in England and Wales and approximately 20,000 in Scotland have been recorded to date, and a second survey is under way to update the existing lists.

EVALUATION AND REGISTRATION

This dual system stems from legislation as far back as 1882 providing for the protection of ancient monuments, but more importantly from the Ancient Monuments Act of 1913, as amended by the 1931 and 1953 acts, which gave power to the appropriate Secretary of State to "schedule" (i.e. list) monuments for preservation which were considered of national importance. Over half of these are field monuments—earthworks and sites; the remainder consists of ruins, important roofed uninhabited buildings and industrial monuments. The legislation excludes ecclesiastical buildings in ecclesiastical use, Crown buildings (unless leased), and occupied dwelling houses.

The system of listing buildings of special architectural and historic interest, grade I or II according to quality (category A or B in Scotland), has developed within the framework of town and country planning legislation. The appropriate Secretary of State is required by the Town and Country Planning Act to compile lists of buildings of special architectural or historic interest for the guidance of local authorities in the performance of their town and country planning functions. The central government has also been listing buildings of special historic and architectural interest since 1947. Most listed buildings are in private ownership and continued use.

Buildings are listed according to a set of criteria originally drawn up by a committee of experts. Listed structures include:

- All buildings constructed before 1700 which survive in a relatively intact state;
- Most buildings dating from 1700 to 1840;
- Buildings of "definite quality and character" built between 1840 and 1914, especially those designed by major architects;
- Selected buildings dating from the period 1914 to 1939.

In the selection of buildings, particular attention is paid to:

- A special value within certain types, either for architectural or planning reasons or as illustrating social and economic history (industrial buildings, railway stations, schools, hospitals, theatres,

- town halls, markets, exchanges, almshouses, prisons, lockups, mills);
- Technological innovation or virtuosity (cast iron, prefabrication, or the early use of concrete);
- Association with well-known characters or events;
- Group value, especially as examples of town planning (squares, terraces or model villages).

After a survey has been carried out by the Ministry's Investigators of Historic Buildings, a provisional list is first issued for each local authority area. These provisional lists describe the buildings listed, and also classify them in grades to show their relative importance.

Grade I.—These are buildings of outstanding interest (only about 4 percent of the listed buildings so far are in this grade).

Grade II.—These are buildings of special interest, which warrant every effort being made to preserve them. Particularly important buildings in grade II are indicated by an asterisk (grade II*).

Grade III.—These buildings do not normally qualify for the statutory lists, but they are important enough to be drawn to the attention of local authorities and others so that the case for preserving them can be fully considered. It should be noted that many of the buildings which were shown as grade III when the lists were first compiled are now considered to be of special interest by modern standards—particularly where they possess "group value." These buildings are therefore being added to the statutory lists as these are revised.

When formalities have been completed, the provisional lists are used as the basis for producing the statutory lists. These no longer contain the descriptions or gradings shown in the provisional lists, but they make all the buildings listed in them subject to legal provisions.

"Scheduled" ancient monuments cover a great variety of structures and a vast number of earthworks. As the Ancient Monuments Acts are concentrated generally on extreme antiquity and sites in the countryside, they are not normally a great problem to a Local Planning Authority, and they avoid the test of aesthetic values.

There are countless unscheduled ancient monuments, which are noted in Gothic type on Ordnance Maps or in block letter for Roman sites. They have no legal protection, but planning authorities are asked to consult the Ancient Monuments Department of the Ministry of Public Building and Works about development which may affect them.

The lists are maintained at the National Monuments Record in London, the Welsh office in Cardiff, or at the office of the relevant county council, county borough or county district council.

PROTECTION

The Field Monuments Act of 1972 contains provisions for the protection of ancient monuments and empowers the Secretaries of State for England, Wales, and Scotland to make a payment to the occupiers of field monuments who are prepared to care for them. Ancient Monuments Boards advise the respective Secretaries of State of monuments considered suitable for scheduling. The legislation requires consent for demolition or alterations to scheduled ancient

monuments and provides for compulsory powers to protect or take into guardianship such properties.

The main safeguard for listed buildings is the legal requirement for prior consent to demolish or alter the character of such buildings. Initial application is made to the local planning authority but the local planning authority must give 28 days notice to the Secretary of State before consent is given. The Secretary of State can decide that the case should be called in for his decision, and determines appeals against the decisions of the local planning authority.

The protection of ancient monuments is administered centrally by the Government. This is because they are often monuments whose structural defects and archaeological complexity demand highly professional treatment for their restoration and maintenance which is provided centrally by the government. Whereas historic buildings are often found in urban settings and may play an important part in the character of a town, ancient monuments are mostly in rural areas where planning considerations are less important. Notice of any intention to demolish or alter a scheduled ancient monument has to be given to the appropriate Secretary of State, who has power to prevent the work. The local authorities, however, have an important part to play in insuring, by the exercise of their planning powers, that ancient monuments are not put in danger by development. The administrative structures, as described, work very efficiently in relation to the laws in force and the situation at hand. The role of the central departments, apart from listing buildings, is to advise local authorities on all aspects of conservation and preservation, and to give technical advice to owners of ancient monuments and listed buildings and to provide encouragement through grants to owners and local authorities.

Since the Civic Amenities Act of 1971, local planning authorities have been required to identify and designate as conservation areas those areas of special architectural and/or historic interest, the character of which it is desirable to preserve or enhance. These areas can be, and often are, quite extensive; they may cover the whole of an historic core of a town or complete villages.

Special development control and conservation policies are usually formulated for these conservation areas, over 3,000 of which have been designated. There is no specific legislative provision for protected zones around historic buildings or conservation areas; this comes within the normal powers of the local planning authority. Once a building has been listed by the Secretary of State, its protection is the responsibility of the local planning authority. The 1973 Town and County Amenities Act introduced control over demolition of almost all buildings in conservation areas.

PRESERVATION AND ENHANCEMENT

In Great Britain, the central government lays down national policies and broadly decides the priority for resources. Within this framework local governments carry out many of the functions relating to the day-to-day life of the community including education, welfare, town and country planning and transport. The allocation of responsibility for the system of control over listed buildings and conservation areas is handled by a two-tier system of counties and county districts

which between them carry out the functions of local government. In town and country planning the counties deal with strategic matters related to the character of their local environment, and deal with individual applications including listed building control. The counties and county districts have concurrent powers to designate conservation areas and to provide protection for listed buildings by building preservation notices and/or conservation area distinctions. Wales and Scotland have similar arrangements with the Secretaries of State for Scotland and Wales exercising powers similar to those of the Secretary of State for the Environment.

The Department of the Environment was formed in November 1970 from three Ministries: Housing and Local Government, Transport, and Public Building and Works. The aim in doing so was to coordinate all the environment policies in central government into one department which would have all the powers necessary for total environmental management. The department is now responsible in England and Wales under one Secretary of State, not only for conservation but for planning and land use, pollution control, transport, housing, public building and construction. In Scotland, the Scottish Development Department, under the Secretary of State for Scotland, similarly combines responsibility for both development and conservation policies. Thus conservation interests are never lost sight of in any development in any of these fields.

For example, one of the main aims of the strategic motorway and principal road programs is the relief of traffic in historic towns and villages. Even more care is now taken to avoid ancient monuments and to record archeological remains that may lie in the path of a new highway. Arrangements are made to insure that public organizations with large building programs are aware of the importance and character of conservation areas where the design of new buildings and modern developments must respect the historic environment. The local authorities produce a structure plan, taking into consideration any planned projects which might affect neighboring areas, or vice versa. The structure plans are produced by the counties after full consultation with the county districts and public discussion of its major points. For planning purposes the country is divided into economic planning regions; there are no regional governments as such. The local authorities in the economic planning regions are brought into cooperative efforts with one another and with the regional organizations of various central government departments. Some regions produce broad regional plans which provide background for the structure plans. These regional planning studies now pay special regard to both the physical and economic well-being of historic settlements and to the natural landscape.

The existing legislation could be classified as satisfactory as the two systems together enable every aspect of the heritage—monuments, historic buildings in private ownership, and sites, to be protected and controls to be exerted over any possible changes which might alter the character of a building.

It is important to note that this successful governmental system for protection of Britain's cultural heritage is supplemented in the private sector by the very strong network of local amenity societies and pressure groups, the growth of which has increased greatly in recent years

with the development of public interest in the conservation and protection of the heritage. Many of these societies work closely with local authorities to preserve the character of town and countryside. The Civic Trust, an independent body, concerns itself with urban areas and acts as an important source of stimulation and technical advice to these local societies and authorities. In addition there are bodies such as the National Trust, a charitable organization which has power to take in trust historic buildings and to be responsible for their care and maintenance. Other specialist and learned bodies, to name just a few such as the Georgian Group, the Society for the Protection of Ancient Buildings, and the Victorian Society, are consulted by local authorities in listing building consent cases. In Scotland the main bodies are the Scottish Civic Trust, the National Trust for Scotland and the Scottish Georgian Society.



APPENDIX III

U.S.S.R.

U.S.S.R.

IDENTIFICATION

Historic preservation has been given a very high emphasis in the Soviet Union, and is a program important to many Government agencies. There are several reasons for an historic property in the U.S.S.R. to be considered of significance: properties may be valued as basic architectural elements which provide a town with a particular visual identity and unique character; properties are also viewed as objects to be studied by those concerned with the history, civilization and the art of the Soviet Union and its provinces; third, historic properties have been acknowledged as important factors in the drive to increase tourism, both domestic and foreign, in the Soviet Union.

On October 2, 1967, the College of the Ministry of Culture of the U.S.S.R. and the Presidium of the Academy of Sciences of the U.S.S.R. issued a joint resolution directing the Academy of Sciences and the Ministry of Culture to develop a codex of Soviet cultural properties to be preserved, which was to be called the Register of Historical and Cultural Monuments of the Peoples of the U.S.S.R. The two organizations were likewise instructed to develop organizational and scholarly measures to facilitate the preparation and publication of such a compendium. In January of the following year, the Ministry of Culture of the U.S.S.R. and the Academy of Sciences of the U.S.S.R. also established the Editorial-Publication Council for the Register, which includes over 50 leading Soviet scholars from all the major humanistic disciplines, to oversee the preparation and publication of the Register.

The primary tasks of developing the methodological basis for the Register and its publication was assigned to the Institute of Art History within the Ministry of Culture of the U.S.S.R., which had advocated the creation of such a compendium. By the end of 1967 a special Office of the Register of Cultural Monuments of the Peoples of the U.S.S.R. was established within the Institute to direct work on the compilation and publication of the Register. The process began with the attempt to review the vast body of existing material pertaining to thousands of cultural monuments in order to verify the data and facts known about them, as well as to conduct extensive supplementary research in order to evaluate properties which have heretofore been little known.

The survey process was begun in the spring of 1972 through two phases of identification and documentation: completion of the registration card followed by the more thorough registration certificate. The registration card is used for recording all stationary archeological, historical, architectural and monumental sculptural structures. Information on the card includes name, type date, location, present use, physical condition, history of structure, type of protection, and available scholarly documentation of the monument and site. The card may be completed by professionals as well as knowledgeable nonprofessionals.

Three copies are made of every registration card. Two copies are filed with the ministry of culture of the republic in which the monument is located and with the local preservation agency. The third copy is deposited with the Ministry of Culture of the U.S.S.R.

The registration certificate, filled out in triplicate by professionals, contains the same type of information as on the card, but in much greater detail. The third copy of the certificate is deposited with the Office of the Register in the Institute of Art History within the Ministry of Culture of the U.S.S.R. The certificate is designed for computerization; a central computer bank for storing the information contained on these forms is currently being developed.

EVALUATION AND REGISTRATION

Once it has been accepted and approved, the certificate becomes the official document certifying registration. This action is taken by the Ministry of Culture of the U.S.S.R. for properties of international and national significance; by the ministries of culture of the constituent republics when the property is of republic or local significance.

To be eligible for inclusion in the Register, cultural properties, known as monuments, must be stationary objects, they must qualify on the basis of international, national, republic, or local significance, and they must be classified as a monument or archeology, history, architecture, or monumental art exhibiting artistic, historical, and scholarly value.

Archeological monuments are judged on the basis of their significance for studying the economic, social, political and cultural history of the peoples populating the country, in illuminating questions of the origins, migrations, and settlement patterns of primitive tribes, as well as in studying the country's material culture and technological development. Valid archeological remains located underground, and providing sufficient evidence of past cultures must be sufficiently stabilized and preserved to reveal the construction of a building type, traces of living processes, or architectural and artistic details.

Historical monuments are judged on the basis of their historical and political significance, as reflected in the association with important events and personalities in the history of the country or of their particular region.

Monuments of architecture and city planning must exhibit the value of the monument in revealing the social foundations and living processes operating in the society which created it; its significance and place in the historical development of the country's architecture, as well as in the development of a local school or tradition; and, finally, the extent to which its esthetic, functional, and technical solutions are both perfected and synthesized within the monument as a whole.

As a rule, all architectural monuments dating through the 18th century, as well as outstanding examples from the 19th and 20th centuries, are eligible for inclusion in the Register, as are all historically evolved architectural ensembles and city planning complexes, irrespective of the artistic value of individual component buildings, and noteworthy natural landscapes with unique topographical and planning features.

Monuments of monumental art are subdivided into two categories.^{*} Stationary monumental sculpture and monumental painting applied directly to architectural monuments are chosen according to the quality of artistic expression and technical execution.

Memorial monuments to outstanding cultural personalities may also be included if the artistic quality of the monument played a significant role in the development either of the national culture or of the culture of a given region. The significance of the personalities or events being commemorated by the memorial are likewise taken into account.

The Editorial-Publication Council, a review body of over 50 distinguished Soviet scholars from those humanistic disciplines encompassed in the Register, is responsible for the setting of policy and guidelines to provide overall supervision of work on compiling the Register. In 1972, it created four specialized "methodological centers," corresponding to the four monument classification categories, to supervise and coordinate the actual work on preparing the material to be published in the Register. The center designated to guide the work on archaeological monuments is the Institute of Archaeology in the Academy of Sciences of the U.S.S.R.; for historical monuments, it is the Commission for Compilation of the Register, established in the Institute of the History of the U.S.S.R. in the Academy of Sciences of the U.S.S.R.; for architectural and monumental art monuments, the Office of the Register within the Institute of Art History at the Ministry of Culture of the U.S.S.R.; for memorial monuments, the Office of the Register and Scholarly Documentation within the Institute of Culture at the Ministry of Culture of the Russian Soviet Federative Socialist Republic (RSFSR). These methodological centers have also begun preparation of the Register for the Russian Republic, editing volumes dealing with its different regions.

The Register of Historical and Cultural Monuments of the Peoples of the U.S.S.R. is intended to be the official government document listing all cultural monuments coming under governmental protection at either the all-union, republic, or local level. It is likewise projected to be the most complete scholarly reference work on registered Soviet cultural landmarks, containing all the basic information and providing access to available source material about them.

All monuments that represent archaeological, historical, architectural, or monumental art significance will be included in the Register, indicating that their protection is of recognized public significance. Also included in the coverage will be entire cities and architectural and planning ensembles of historical significance, as well as monumental painting and sculpture and any other applied arts with which the above monuments are interrelated. Where a monument or monuments are eligible under different classifications, they will be cross-referenced and, in some cases, treated simultaneously in different categories.

PROTECTION

As soon as a cultural monument is registered with the local cultural offices and eventually with the republic ministry of culture, it receives governmental protection at these respective levels. After further documentary research, the potential nomination to the Register may be submitted to the Ministry of Culture of the U.S.S.R. for inclusion as a cultural monument of national, or all-union, significance.

When this is achieved, the cultural monument receives national protection. Approximately 10,000 monuments are now afforded governmental protection.

Three types of "zoning" serve to enforce preservation of the monuments. A "protective zone" seeks to preserve both the monument itself and its immediate surroundings by prohibiting demolition of the monument or intrusion by new additions to the building itself. The "zone regulating construction" is designed to preserve the setting that has historically evolved around the monument, including not only the architectural and planning system in which it has evolved, but its visual and natural environment as well. New construction, though permitted within this zone, is strictly regulated in terms of height, density, and compatible land use. The "preservation zone" has only recently been developed to preserve entire historically evolved architectural and planning ensembles, in which the historic ensemble as a whole rather than the individual building and its surroundings constitutes the registered cultural landmark. The protective aspects of this zone include emphasis upon the preservation, stabilization and restoration, and adaptive use of surviving historic buildings, as well as upon control of new construction to harmonize with the historic character of the area.

In the case of restored, rehabilitated, or adaptively used structures, there may be an agreement between the occupant and the cultural agency having jurisdiction over the property. This agreement provides that the property will be used and maintained to certain standards, and that no alterations to significant historic or architectural elements will be made without the prior approval of the Ministry of Culture. For violation of the agreement, there may be imposition of a fine of up to approximately \$2,000, and provision that the property be repaired again to its previous restored condition.

PRESERVATION AND ENHANCEMENT

The Ministry of Culture of the U.S.S.R. and its republic counterparts have been given responsibility to formulate and administer national preservation policy in the Soviet Union. The Ministry of Culture of the U.S.S.R. is responsible for coordinating the work of its republic counterparts on the identification and preservation of cultural and historic monuments. This includes the development of criteria for the registration and protection of landmarks, urban centers, and entire towns, as well as the administration of a network of offices of State inspection of monuments and a number of restoration workshops which plan and supervise the actual restoration and maintenance of registered monuments.

The two agencies within the Ministry of Culture of the U.S.S.R. which have been created to conduct this work are the Office of Fine Arts and Protection of Monuments, which also houses the Office of State Inspection for the Protection of Cultural Monuments and the Institute of Art History, which houses both the sector of the Register of the Historical and Cultural Monuments of the Peoples of the U.S.S.R. and the Editorial-Publication Council for the Register. It is in these two agencies that the actual implementation of survey, registration, and publication of cultural monument takes place.

Actual restoration and conservation work in the Soviet Union is carried out under the auspices of The All-Union Production and Scientific Restoration Center. Operated by the Ministry of Culture of the U.S.S.R., the center is responsible for the development of restoration studies and preparation of restoration drawings for architectural monuments, as well as for the overall supervision over the execution of the project. It consists of two major departments, a design department, and a production shop. The design department includes six sections: the architectural section, a research section, an engineering section, an estimating section, a photogrammetry section, and a library and archives.

The Special Scientific/Professional Union of Restoration Works, though similar in scope to the above center, is a municipal enterprise of the Leningrad executive committee (city council).

Another organization, the Trust for Facade Rehabilitation, is responsible for restoration of exteriors, although its work is subordinated to the union as well as to the Office of Inspection.

The union provides scheduling for the proper use of manpower; buildings to be restored are programmed 2 years in advance, according to priorities established by the Office of Inspection.

Other specialized restoration workshops are located at individual monument projects such as the Catherine II Palace at Pushkin, when a particularly large restoration effort may be underway.

Historic and cultural preservation in the Soviet Union is not confined to governmental programs, but it is a matter in which there is also considerable private participation. There is indeed private ownership of residential property, which frequently may be listed on the Register of Historical and Cultural Monuments. If restoration work is required on a particular privately owned structure, the owner is moved out temporarily at State expense while the necessary work is done (again at State expense). It is usually the responsibility of the owner to maintain the property, but if for some reason he cannot, the State or local governmental office will perform the necessary repairs without forcing the owner to give up his property.

An example of the strength of private interest in preservation is the All-Russian Society for the Protection of Historical and Cultural Monuments. Organized in 1965 by a group of intellectuals in protest of the destruction of historic buildings during the construction of the 4,000-room Hotel Rossiya adjacent to Red Square in Moscow, the society is officially sanctioned by the Soviet Union, and now has over 26 million members throughout the Soviet Union, many of them belonging to sister organizations in the other 14 Soviet Republics. The society has been successful in preventing the loss of numerous historic structures, and influential in furthering the interests of preservation among the Soviet peoples.

APPENDIX IV

Japan

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JAPAN

IDENTIFICATION

Under the 1950 "Law for the Protection of Cultural Properties," four classes of cultural property were created. Tangible cultural properties include buildings, pictures, sculptures, applied arts, calligraphic works, classical books, ancient documents, and archeological specimens. Intangible cultural properties are the arts and skills of drama, music, and applied arts. Folk-culture consists of manners and customs related to food, clothing, housing, occupations, religious faiths, and festivals, and of illustrative clothing, implements, houses, and other objects. Monuments are shell mounds, ancient tombs, and archeological sites of historical value; gardens, bridges, gorges, seashores, mountains, and other places of scenic or esthetic value; and animals, plants, geological features, and minerals of scientific value.

These four classifications of property are applied to all historic buildings whether in public or private ownership. They are studied, classified, and designated by the National Government as well as by prefectural and municipal governments. The basic designations are "Important cultural property," "Important intangible cultural property," and "Important folk-culture." Tangible properties of outstanding significance are further designated "National treasures." A person possessing an art or skill designated an "Important intangible cultural property," such as the creation of samurai swords of high artistic excellence, is recognized as its "Holder." "Monuments" are designated "Historic site," "Place of scenic beauty," and "Natural monument," with superlative examples of each given the further label of "Special."

As of September 1, 1973, there were 10,336 important cultural properties, including 1,016 national treasures; 64 important intangible cultural properties; 88 important folk-cultures; and 2,021 historic sites, places of scenic beauty, and natural monuments, of which 145 were "Special." In addition, prefectural designations in these categories totaled 12,272 and municipal designations another 30,570.

Until very recently there was little concept of historic district or environmental conservation in Japan, as historic preservation has traditionally been confined to objects and structures having special associative value and significance in the cultural history of the country. Although there are few remaining areas which have not been destroyed by uncontrolled urbanism, as well as natural disasters such as earthquakes, there is now a growing awareness of the importance of the historical and environmental ambience. Consequently, several historic districts have been established; and a new concern is evident for protecting monuments with suitable surroundings.

EVALUATION AND REGISTRATION

The Agency for Cultural Affairs conducts studies and investigations of the various categories of both tangible and intangible cultural properties, as well as folk-culture and monuments, in order to make professional evaluations qualifying selected "monuments" as meriting

national recognition. Although the survey programs are organized to proceed systematically, agency officials concede that there are so many threats to properties and pressures for study that they tend to respond to outside initiative rather than to take the initiative themselves.

All proposed properties are professionally studied and evaluated by staff specialists according to uniform criteria and passed upon by an internal consulting committee before receiving the Agency's designation. As an example of the criteria, those for historic buildings are as follows: (1) Historical importance, (2) method of construction and techniques, (3) significance of design, and (4) regional characteristics. These criteria are the same for the designation of important cultural property as for national treasure, except that for the latter they are more stringently applied. Designations, especially national designations, are usually given prominent notice. The property itself is ordinarily conspicuously labeled with its designation and the fact noted in associated literature. In addition, all levels of government publish guides to designated properties. The Agency for Cultural Affairs has published three volumes of detailed maps showing the location of all designated properties, and the prefectural governments publish guidebooks listing and illustrating properties shown on the maps.

PROTECTION

Under the 1950 "Law for the Protection of Cultural Properties" specially designated properties, both publicly and privately owned, are subject to restrictions designed to insure their preservation according to officially accepted practices and techniques of conservation and restoration. All such properties are eligible for government subsidies, technical advice and assistance. Specific penalties are imposed for noncompliance with regulations outlined in the legislation.

PRESERVATION AND ENHANCEMENT

The responsibility for these programs is carried out under the Ministry of Education by the Agency for Cultural Affairs. Divided into two departments, cultural affairs and cultural properties protection, it is the latter department which is concerned with the matter of preservation. The office is divided into five divisions—administration, monuments, fine arts, architecture and intangible cultural properties.

The preservation office deals with the study and designation of important cultural properties and national treasures, prescribing guidelines for their preservation and management, conducting inspections and dispensing subsidies. As noted above, Agency officials work closely with their counterparts on the prefectural and municipal levels, where preservation and conservation expertise is located in great strength.

Also associated with the Agency are three national museums and two national research institutes of cultural properties who operate fairly independently despite their connection with the Agency. These technical laboratories are invaluable to the Agency for their professional capabilities enforce the Agency's decisions and programs. The Tokyo Institute studies the arts, skills, and folkways that form Japan's

intangible cultural heritage and performs scientific experiments in the preservation of wood, paper, glass, ceramics, metal, textiles, and other cultural fabrics. The Nara Institute pursues inquiries into architectural history and building technology and conducts internationally significant archeological excavations at the eighth-century Heijo and Asuka-Fujiwara Palace sites.

The national government is one of the major sources of financing for preservation projects. Its subsidies range from token assistance to as much as 90 to 100 percent of the total cost. Prefectural and municipal governments help match national contributions to nationally designated properties, and provide their own subsidy programs for prefecturally and municipally designated properties which do not bear a national designation.

In fiscal year 1974, the national government awarded approximately \$386,000 in 100 percent subsidies for restoration and repair of architectural monuments, and about \$5,700,000 in partial subsidies for the same purpose. Antidisaster measures for architectural monuments were appropriated in the amount of \$179,000. Other special preservation projects were allotted about \$15,700,000, making a total of almost \$21,000,000 in national expenditures alone for preservation.

Japanese preservation officials, aware of the increasing difficulty encountered in locating traditional craftsmen with the necessary skills for authentic restoration of cultural properties, were influential in the formation of a private association or guild, translated as the Association for Conservation Techniques for Architectural Monuments. This "guild" recruits and trains restoration craftsmen and assures continuity in their employment.

Certainly the most notable characteristic of the Japanese system of preservation is their concept of "intangible cultural properties" which include the arts and skills of drama and music. To take matters even further, the Japanese not only recognize and register "intangible properties" but also register and assign importance to the person "holding" the skill and talent for performing ability in his area of specialization. No other country affords this importance to intangible objects, or registers them in such a manner although they may in other and less significant ways, acknowledge their irreplaceable nature from a historical viewpoint.

APPENDIX V
The Netherlands

THE NETHERLANDS

IDENTIFICATION

The preservation of monuments and historic buildings by the Dutch government came into being in the 19th century. In 1875 the Ministry of Home Affairs was assigned the task of promoting the preservation of monuments and historic buildings which could then be accomplished only through small grants. The Government Bureau for the Preservation of Monuments and Historic Buildings was instituted in the early twenties, which later became the present Department for the Preservation of Monuments and Historic Buildings located at Zeist. At this time the Government, as a provider of financial assistance, also was given a say in the way in which restoration was to be carried out.

However, activity in the field of preservation and restoration of cultural property was still modest as only a few hundred buildings were involved. After 1945, the amount of funds available for subsidizing restoration projects was substantially increased and the necessity of providing legislation for the preservation of monuments and historic buildings became more apparent.

In 1961, the Monuments Act was enacted. According to this act, monuments are defined as buildings at least 50 years of age which are of public interest "because of their beauty, their significance for science or their ethnological value." Monuments may include houses, hotels and inns, farms, churches, town halls, castles, fortifications, government buildings and windmills. The eligibility of churches for classification as monuments is quite different from the policies of Canada and Great Britain which generally exclude active churches from this category.

The Monuments Act also provides the opportunity to appoint protected sites, which may be urban or rural, and may include ensembles or groups of buildings, streets, squares, canals, et cetera as a type of "historic district." "Protected" monuments and sites are buildings and sites which have been entered by the Minister of Cultural Affairs, Recreation and Social Welfare in the Register of Protected Monuments.

Monuments below ground level, such as foundations, burial-places and other archeological monuments come under the State Service for Archeological Investigations. This service was established in 1947 for the purpose of conducting scientific research in the field of Dutch archeology and to create an archeological documentation center. Separate regulations and institutions have been created for the protection and conservation of movable monuments of history and art, as well as for natural monuments.

EVALUATION AND REGISTRATION

Protected monuments are chosen on the basis of their artistic and architectural values, and the relative importance and rarity of the structure in its particular building or stylistic category. As of

October 1, 1974, protected sites numbered 130, and protected monuments totaled almost 40,000, with the following breakdown according to building type:

Government buildings.....	603
Fortifications.....	601
Churches and church buildings.....	2,228
Objects in churches (organs et cetera).....	436
Private houses.....	28,372
Charities and convent buildings.....	339
Farm houses and buildings.....	4,820
Windmills and watermills.....	1,038
Historic roadworks and hydraulic works.....	285
Historic pubs, restaurants, and hotels.....	137
Castles.....	261
Other objects.....	807
Total.....	39,927

Like protected monuments, protected sites must be of public interest with respect to their well-conserved historic character. An inventory is carried out in which all towns and villages are examined to determine whether they are of sufficient historic interest to be protected. During this process, the various types of urban and rural settlements are classified, and only the most interesting and representative examples are chosen for listing in each category of settlement. To make these selective determinations, historic facts and events are studied carefully, as well as building types, and the structure and pattern of the urban or rural configuration.

Unlike the process of "appointing" historic structures to the Monuments Register which requires only the approval of the Minister of Cultural Affairs, the "appointment" for protection of sites must be made with the joint approval of both the Minister of Cultural Affairs and the Minister of Housing and Planning. After a site is appointed, the municipal authorities, with the help of a thorough "site report" prepared by the Department for the Preservation of Monuments and Buildings, are expected to work out a zoning plan which includes detailed building regulations for new construction as well as restoration work. Frequently, but not always, these regulations forbid demolition of historic buildings in the district without permission.

Both the Department for the Preservation of Monuments and Historic Buildings and the Council of Monuments play a part in compiling the lists of monuments, and later, the Monuments Register. The 1961 Monuments Act provides that the Council should determine for each municipality in the Netherlands what buildings can be marked as protected monuments. The Department draws up a provisional inventory and the Council of Monuments makes a decision on this first choice. On the basis of this choice, a first draft list is compiled. It is sent to the provincial authorities and the local authorities, who, in turn, can respond to the proposals. Owners of monuments and other persons concerned may also raise their objections.

Once on the so-called draft monuments list, the monument enjoys a temporary protection for the period of 2 years. After this period during which time consultations can still take place between all those concerned, the Minister of Cultural Affairs, Recreation and Social Welfare, makes a final decision on the list, after which public registration follows.

Actual registration of structures was not begun until 1961, after the Monuments Act came into force. The Council of Monuments determined that buildings dating before 1850 should be registered first, to be followed by registration of those built in the period of 1850–1924. Copies of the Monuments Register are maintained in three places: in the national office in Zeist, at the provincial office and at the municipal office.

PROTECTION

The monuments and historic buildings on the Monuments Register may not be demolished or modified without the consent of the Minister of Cultural Affairs, Recreation and Social Welfare. This system of review provides an opportunity to judge plans and schemes and to find the best solution, taking into consideration the historic character of the building. Owners of historic buildings who do not apply for this permission are liable to a fine of approximately \$2,500. These penalties also apply to damage of an archaeological monument.

Damaging of structures and sites is not explicitly made punishable. Here protection depends on a zoning plan with detailed building regulations. Under the Physical Planning Act of 1965, a fine equal to approximately \$1,500 may be imposed for noncompliance. A judge may require the owner to undo any unapproved changes he may have made to a structure or site.

PRESERVATION AND ENHANCEMENT

The preservation of monuments and historic buildings is entrusted to the Minister of Cultural Affairs, Recreation and Social Welfare. Especially concerned with this at the Ministry is the Directorate of Museums, Monuments and Archives.

The Government is responsible for the Monuments Register, and it works to prevent demolition, mutilation and destruction of monuments; to promote restoration; and to preserve old city and village centers. Other tasks of the central government are support to associations concerned with the preservation of monuments and historic buildings, granting subsidies for restoration activities, and recording monuments with photographic and written documentation.

The Minister of Cultural Affairs, Recreation and Social Welfare, is assisted by an independent advisory body, the Council for Monuments and Historic Buildings. This council is divided into a number of committees, among them the Government Committee for the Preservation of Monuments and Historic Buildings; the Government Committee for Archeological Examination of the Soil; and the Government Committee for the Description of Monuments.

Most of the protective and executive tasks of the Council for Monuments and Historic Buildings are carried out by the Department for the Preservation of Monuments and Historic Buildings. This department nominates structures to the Monuments Register, while the final decision is left to the Minister of Cultural Affairs. In addition, this department has the task of guiding the restoration projects and of advising in all those cases where proposals are made to modify monuments and historic buildings. Furthermore, it provides information about restoration, conversion, and subsidy availability. This

Department for the Preservation of Monuments and Historic Buildings is composed of divisions in art history, monument management, registration and legal affairs, and art protection. Specialists in these divisions include: art historians, architects, planners, sculptors, experts on mural paintings, draftsmen, photographers and windmill and watermill experts. The department maintains files of more than 180,000 photographs and over 80,000 drawings of historic buildings in the Netherlands and a library with approximately 20,000 books on architecture.

The Dutch Government provides generous subsidies to owners of monuments for the restoration of their property. For registered monuments there are certain fiscal advantages when they are used as private homes. Maintenance costs are free from income tax. This does not apply to houses in protected sites if these are not registered monuments.

In 1975 the national government contributed approximately \$18 million toward monument restoration. The municipalities together added about the same amount and the provincial authorities provided a total support equal to \$1,286,000. This totals some \$37,286,000. In general this assistance for preservation from governmental sources covers 70 percent of the estimated restoration costs. Financial assistance for urban and rural sites according to section 20 of the Monuments Act is also furnished for improvement of housing conditions. This social advantage is honored by the Ministry of Housing by financial assistance in the cost of rebuilding, in order to adapt old houses of historic interest to modern standards. The conservation of their cultural values is supported by the Ministry of Cultural Affairs. Together, these two ministries furnish about 50 percent of the rebuilding and improvement costs. In this way, many monuments or historic houses not listed on the register are also improved.

Private efforts in preservation are coordinated with those of the governmental authorities through the recently founded National Foundation Contact Committee for the Protection of Monuments.

There are numerous private or non-governmental organizations of both local and national scale in the Netherlands concerned with the preservation of historic sites and structures. The Royal Netherlands Antiquarian Society has been active since 1879 in this area. Other such groups include the Hendrick de Keyser Association, the Amsterdam Company for City Restoration and the Diogenes Trust. Another non-governmental organization, the National Foundation for the Protection of Monuments, was created to promote preventive or early preservation of historic buildings—conservation rather than preservation. The Foundation tries to carry out this directive through regular inspection of the building fabric of historic structures, and if necessary, making minor repairs before they become a more serious restoration problem.

APPENDIX VI

Canada

CANADA

IDENTIFICATION

The Historic Sites and Monuments Act, as amended in 1953, separates cultural properties into historic places and national historic parks and sites. An historic place is broadly defined as a site, building, or other place of national historic interest or significance, which may be declared so because of age or architectural design. Identification of an historic place is carried out according to the following criteria:

- The site or structure shall be closely associated or identified with events that have shaped Canadian history in a prominent way, or illustrate effectively the broad cultural, social, political, economic, or military patterns of Canadian history;
- The site or structure shall have been prominent associated with the life of a great Canadian personage; or
- The site or structure shall have been prominently associated with an important movement in Canadian history; or
- The site or structure shall shed light on, or illustrate effectively, the culture of a prehistoric people, or shall be associated with important archaeological discoveries which have affected ideas and concepts to a major degree; or
- The structure shall embody the distinguishing characteristics of an architectural type exceptionally valuable for the study of a style or method of construction or its period or be a notable example of the work of an early master builder, designer, or architect.

If the site or structure has religious importance, in order to be eligible it shall also be significant in other fields of Canadian history and shall be no longer in active use by a religious order or congregation. There is also a heavy emphasis placed on the tourism potential of a site, as well as the extent of original materials and workmanship remaining in a structure.

The second category of national historic parks and sites is divided into parks and sites. A national historic park is generally considered to be an area with or without structures of major historic significance suitable in size for development as a park with effective interpretive displays. A national historic site shall be any area or structure considered to be of major historic significance. If Parliament so enacts, national historic parks will be deemed to be of such importance to the interpretation of the history of Canada that any deletions of those parks or any portions thereof will require an act of Parliament. Only places of national historical importance are commemorated, and of these only those which illustrate in an exceptional way the history of Canada will be preserved or restored.

Provisional master plans shall be prepared as soon as possible for each national historic park and site. A long-range national program will be prepared under which regional and thematic priorities will be

established and a comprehensive program laid down for the simultaneous creation of a series of new national historic parks and sites and the development of existing parks and sites to their full potential in accordance with these priorities.

EVALUATION AND REGISTRATION

In 1970 the Canadian Inventory of Historic building was initiated. This national survey, begun by the National Historic Sites Service of the Department of Indian Affairs and Northern Development, is believed to be the first comprehensive architectural inventory in the world created for a computerized information system.

The project is anticipated to take ten years to complete, beginning with studies of building exteriors and culminating with in-depth studies of the best structures. The first phase completed in 1973 recorded the exteriors of 100,000 buildings to produce a broad view of the architectural heritage. The second phase describes the interiors and architectural details of 10,000 buildings chosen from the results of phase one. In the third phase, some 2,000 structures are to be selected from phase two for more detailed analysis. Researchers will examine and record structural details and will delve into town and city records to determine the building date, architect and original owner of each structure.

The inventory will survey over 200 years of Canadian building, from earliest surviving buildings, dating from the late 1600's and primarily found in Quebec province, to those built in the early 1900's and found throughout Canada. The present historical boundary for the survey is generally 1880 for the eastern provinces, and 1914 for the west and north.

The survey recorders, students and other interested individuals, are recruited from the areas in which they are to work. Local teams are headed by captains trained by the Department's Ottawa staff of architectural historians.

The survey method is based on the numerical coding of the architectural components of a building, and the information is fed to a computer. Each building is also coded for location—including area, street and house number. The digital system is the key to processing the seven million items of information the first five years of the survey will produce. At the core of the survey is a ten-page list on which the field surveyor checks off the features of the particular building being examined. Categories range from "historical significance" and "present use" (the latter listing no less than 90 descriptions from which the surveyor may choose), to exterior architectural features. In turn, these categories are broken down into the particular characteristics typical of Canadian architecture. Simple illustrations show the exact form of building detail, varieties of structural plan, or method of construction. Further, the building material used may have up to eight textures or patterns—all carefully drawn and named on the recorder sheets for the surveyor's discerning eye. An important aspect of the system is that it is open-ended and new information can be added at any point. The system is also economical in by-passing the need for a large cadre of trained architectural historians to do the basic coding. Professionals are more appropriately employed evaluating received data and interpreting the results.

The data compiled through this National Historic Sites Service survey will be made available, in catalog form, to all provinces for use in their own planning in this field. In preparing a basis for building evaluation, the Service Team will also help to encourage efforts of interested individuals and private enterprise in restoration and use of worthwhile structures. The concept of the inventory has been discussed with other federal agencies, provincial government departments and organizations concerned with preservation, and the Historic Buildings Committee of the Royal Architectural Institute of Canada. The inventory will provide a valuable basis for federal-provincial cooperation in preserving buildings of historical and architectural significance throughout Canada.

PROTECTION

The Canadian Inventory of Historic Building is basically equivalent to the National Register of Historic Places in the United States. However, at this time, the Inventory is a survey, and the buildings are not "listed" as such. The intention is to do the survey first, then work out a logical system, based on the inventory, for listing the structures, in order to afford legal protection for them.

PRESERVATION AND ENHANCEMENT

Responsibility for Canada's program of commemorating historic sites of national importance rests with the Minister of Indian Affairs and Northern Development by virtue of the Historic Sites and Monuments Act, as amended, and the National Parks Act.

A national historic site may be designed by the Minister of Indian Affairs and Northern Development, and a national historic park may be established by the Governor in Council. In practice the Minister does not designate national historic sites until he receives the advice of the Historic Sites and Monuments Board of Canada.

This Board is at present comprised of 14 members, 12 representatives from the 10 provinces (two each from Ontario and Quebec and one each from the remaining eight provinces), the Dominion Archivist, and a representative from the Department of Indian Affairs and Northern Development. The provincial representatives are usually noted historians or archivists, and the Board, particularly in recent years, has played an increasingly important role in giving informed and impartial advice to the Minister.

The Minister of Indian Affairs and Northern Development is responsible for:

- The commemoration of historic places and for their care and preservation;
- The establishment of historic museums with the approval of the Governor in Council;
- The acquisition on behalf of Her Majesty of any historic places, or lands for historic museums, or any interest therein, by purchase, lease or otherwise with the approval of the Treasury Board; and
- The administration, preservation, and maintenance of any historic places acquired for historic museums established pursuant to this Act.

The Governor in Council with respect to national historic parks may set apart any land, title to which is vested in Her Majesty, as a national park to commemorate an historic event of national importance, or preserve any historic landmark, or any object of historic, prehistoric or scientific interest of national importance. All preservation and historic sites programs in Canada are under the supervision of the Department of Indian Affairs and Northern Development. This department is divided into two administrative sections: the National Historic Sites Service, and Parks Canada.

The National Historic Sites Service is in the process of carrying out a management study to determine what types of professional expertise are needed to best administer and maintain historic sites. From this study, the National Historic Sites Service will develop technical training programs in specialized fields of preservation, conservation, and interpretation.

While the National Historic Sites Service is responsible for the creation of a governmental historic preservation policy, the actual task of enacting these policies is left to Parks Canada. Parks Canada is working toward the establishment of a monuments conservation laboratory containing a complete preservation materials workshop in almost every region. Eventually conservation experts will be equally parceled out to all regions, a significant move away from the previous concentration of expertise in the Central office. Standards for structural restoration are based on the American National Trust axiom, "It is better to preserve than repair, better to repair than restore, better to restore than reconstruct."

In restoration and reconstruction of historic structures, line, level, and fabric are to be as true to the original as possible, and departure from this rule shall be justified only by necessity or for the purpose of increasing the life expectancy of the structure, and only then when modern materials and techniques can be effectively concealed. Restoration or reconstruction is to be carried out on the original site.

The private sector in the field of historic preservation is represented by Heritage Canada, formed in 1973. Heritage Canada is a form of national trust, a national, nonprofit organization created to "promote, preserve and develop articles, building and even landscapes for the enjoyment of present and future generations," and which will "actively participate in the preservation and protection of Canada's historic, architectural, natural and scenic assets." Heritage Canada interests itself in a wide range of properties of local, regional, or national importance, and works closely with the provincial representatives, other organizations and individuals concerned with heritage preservation. Heritage Canada received its funds from donations, bequests, membership fees and revenues from sale or rental of property.

Since Heritage Canada is such a new organization, its policies concerning property acquisition have not been defined completely. It may seek other agencies or individuals willing to buy and conserve heritage property and support them in preparing the property for public use. Property can be acquired through donation, bequest, purchase, exchange, or lease. Both "real property" and "personal property" will be considered for acquisition by Heritage Canada. "Heritage Property," buildings or landscapes, will be held in trust for the nation. Other buildings not of "heritage property" quality may be sold after renovation and placed under restrictive covenants. Other property

not of historic or architectural value may be operated for its revenue, which will then be used for the support of Heritage Canada. Certain personal property may also be declared "Heritage Property" such as original furnishings or fixtures, which form an integral part of a building or landscape; however, Heritage Canada will not concern itself with "collections" per se.

In Canada, historic preservation interests are also the concern of many smaller, local, private organizations, but Heritage Canada is the national preservation organization representing the private sector.



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