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Abandoned Shipwreck Act

§ 2101. Findings
The Congress finds that -

- (a) States have the responsibility for management of a broad range of living and nonliving resources in State waters and submerged lands; and

- (b) included in the range of resources are certain abandoned shipwrecks, which have been deserted and to which the owner has relinquished ownership rights with no retention.

§ 2102. Definitions
For purposes of this chapter -

- (a) the term "embedded" means firmly affixed in the submerged lands or in coralline formations such that the use of tools of excavation is required in order to move the bottom sediments to gain access to the shipwreck, its cargo, and any part thereof;

- (b) the term "National Register" means the National Register of Historic Places maintained by the Secretary of the Interior under section 470a of title 16; [section 101 of the National Historic Preservation Act]
• (c) the terms "public lands", "Indian lands", and "Indian tribe" have the same meaning given the terms in the Archaeological Resource (FOOTNOTE 1) Protection Act of 1979 (16 U.S.C. 470aa-470ll);

(FOOTNOTE 1) So in original. Probably should be "Resources".

• (d) the term "shipwreck" means a vessel or wreck, its cargo, and other contents;

• (e) the term "State" means a State of the United States, the District of Columbia, Puerto Rico, Guam, the Virgin Islands, American Samoa, and the Northern Mariana Islands; and

• (f) the term "submerged lands" means the lands -
  o (1) that are "lands beneath navigable waters," as defined in section 1301 of this title; [section 2 of the Submerged Lands Act]

  o (2) of Puerto Rico, as described in section 749 of title 48; [section 8 of the Act of March 2, 1917, as amended]

  o (3) of Guam, the Virgin Islands and American Samoa, as described in section 1705 of title 48; [section 1 of Public Law 93-435] and

  o (4) of the Commonwealth of the Northern Mariana Islands, as described in section 801 of Public Law 94-241.

§ 2103. Rights of access

• (a) Access rights

  In order to -

  o (1) clarify that State waters and shipwrecks offer recreational and educational opportunities to sport divers and other interested groups, as well as irreplaceable State resources for tourism, biological sanctuaries, and historical research; and

  o (2) provide that reasonable access by the public to such abandoned shipwrecks be permitted by the State holding title to such shipwrecks pursuant to section 2105 of this title, it is the declared policy of the Congress that States carry out their responsibilities under this chapter to develop appropriate and consistent policies so as to -
• (A) protect natural resources and habitat areas;

• (B) guarantee recreational exploration of shipwreck sites; and

• (C) allow for appropriate public and private sector recovery of shipwrecks consistent with the protection of historical values and environmental integrity of the shipwrecks and the sites.

• (b) Parks and protected areas In managing the resources subject to the provisions of this chapter, States are encouraged to create underwater parks or areas to provide additional protection for such resources. Funds available to States from grants from the Historic Preservation Fund shall be available, in accordance with the provisions of title I of the National Historic Preservation Act, for the study, interpretation, protection, and preservation of historic shipwrecks and properties.

§ 2104. Preparation of guidelines

• (a) Purposes of guidelines; publication in Federal Register

In order to encourage the development of underwater parks and the administrative cooperation necessary for the comprehensive management of underwater resources related to historic shipwrecks, the Secretary of the Interior, acting through the Director of the National Park Service, shall within nine months after April 28, 1988, prepare and publish guidelines in the Federal Register which shall seek to:

  o (1) maximize the enhancement of cultural resources;

  o (2) foster a partnership among sport divers, fishermen, archeologists, salvors, and other interests to manage shipwreck resources of the States and the United States;

  o (3) facilitate access and utilization by recreational interests;

  o (4) recognize the interests of individuals and groups engaged in shipwreck discovery and salvage.

• (b) Consultation

Such guidelines shall be developed after consultation with appropriate public and private sector interests (including the Secretary of Commerce, the Advisory Council on Historic
Preservation, sport divers, State Historic Preservation Officers, professional dive operators, salvors, archeologists, historic preservationists, and fishermen).

- (c) Use of guidelines in developing legislation and regulations

Such guidelines shall be available to assist States and the appropriate Federal agencies in developing legislation and regulations to carry out their responsibilities under this chapter.

§ 2105. Rights of ownership

- (a) United States title The United States asserts title to any abandoned shipwreck that is -
  
  - (1) embedded in submerged lands of a State;
  - (2) embedded in coralline formations protected by a State on submerged lands of a State; or
  - (3) on submerged lands of a State and is included in or determined eligible for inclusion in the National Register.

- (b) Notice of shipwreck location; eligibility determination for inclusion in National Register of Historic Places The public shall be given adequate notice of the location of any shipwreck to which title is asserted under this section. The Secretary of the Interior, after consultation with the appropriate State Historic Preservation Officer, shall make a written determination that an abandoned shipwreck meets the criteria for eligibility for inclusion in the National Register of Historic Places under clause (a)(3) of this section.

- (c) Transfer of title to States The title of the United States to any abandoned shipwreck asserted under subsection (a) of this section is transferred to the State in or on whose submerged lands the shipwreck is located.

- (d) Exception Any abandoned shipwreck in or on the public lands of the United States is the property of the United States Government. Any abandoned shipwreck in or on any Indian lands is the property of the Indian tribe owning such lands.

- (e) Reservation of rights This section does not affect any right reserved by the United States or by any State (including any right reserved with respect to Indian lands) under -
  
  - (1) section 1311, 1313, or 1314 of this title; [section 3, 5, or 6 of the Submerged Lands Act] or
§ 2106. Relationship to other laws

• (a) Law of salvage and law of finds

The law of salvage and the law of finds shall not apply to abandoned shipwrecks to which section 2105 of this title applies.

• (b) Laws of United States

This chapter shall not change the laws of the United States relating to shipwrecks, other than those to which this chapter applies.

• (c) Effective date

This chapter shall not affect any legal proceeding brought prior to April 28, 1988.
Sec. 5911. - Protection, interpretation, and research in National Park System

Recognizing the ever increasing societal pressures being placed upon America's unique natural and cultural resources contained in the National Park System, the Secretary shall continually improve the ability of the National Park Service to provide state-of-the-art management, protection, and interpretation of and research on the resources of the National Park System.
Sec. 5912. - National Park Service employee training

The Secretary shall develop a comprehensive training program for employees in all professional careers in the work force of the National Park Service for the purpose of assuring that the work force has available the best, up-to-date knowledge, skills and abilities with which to manage, interpret and protect the resources of the National Park System.
Sec. 5931. - Purposes

The purposes of this subchapter are -

(1) to more effectively achieve the mission of the National Park Service;

(2) to enhance management and protection of national park resources by providing clear authority and direction for the conduct of scientific study in the National Park System and to use the information gathered for management purposes;

(3) to ensure appropriate documentation of resource conditions in the National Park System;

(4) to encourage others to use the National Park System for study to the benefit of park management as well as broader scientific value, where such study is consistent with sections 1, 2, 3, and 4 of this title; and

(5) to encourage the publication and dissemination of information derived from studies in the National Park System.
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• **Sec. 164.** Minimum penalties for repeat offenders for driving while intoxicated or driving under the influence
ARCHEOLOGICAL DATA PRESERVATION ACT
16 United States Code 469 - 469c-1

469. Preservation of historical and archeological data threatened by dam construction or alterations of terrain.

It is the purpose of sections 469 to 460 c-1 of this title to further the policy set forth in sections 461 to 467 of this title, by specifically providing for the preservation of historical and archeological data (including relics and specimens) which might otherwise be irreparably lost or destroyed as the result of the (1) flooding, the building of access roads, the erection of workmen's communities, the relocation of railroads and highways, and other alterations of the terrain caused by the construction of a dam by any agency of the United States, or by any private person or corporation holding a license issued by any such agency or (2) any alteration of the terrain caused as a result of any Federal construction project or federally licensed activities or program.

469a. Notice of dam construction to be given Secretary of the Interior by United States agencies.

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

469a-1. Threat of irreparable loss or destruction of significant scientific, prehistorical, historical, or archeological data by Federal construction projects; notice to Secretary of the Interior; survey; recovery, preservation, and protection of data.

(a) Notification and request for preservation of data.

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

(b) Survey of site; preservation of data; compensation.

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

469a-2. Survey by Secretary of the Interior; recovery and preservation of data; compensation for delays in construction and for temporary loss of use of land.

(a) Survey conducted; preservation of data.

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

(b) Emergency projects.

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

(c) Initiation of survey.

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

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

469a-3. Progress reports by Secretary of the Interior on surveys and work undertaken as result of surveys; disposition of relics and specimens recovered; coordination of survey and recovery activities; annual report.

(a) Progress reports to funding or licensing agency.

The Secretary shall keep the agency responsible for funding or licensing the project notified at all times of the progress of any survey made under section 469 to 469c of this title or of any work undertaken as a result of such survey, in order that there will be as little disruption or delay as possible in the carrying out of the functions of such agency and the survey and recovery programs shall terminate at a time mutually agreed upon by the Secretary and the head of such agency unless extended by mutual agreement.

(b) Disposition of relics and specimens.

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

(c) Coordination of activities; annual report.

The Secretary shall coordinate all Federal survey and recovery activities authorized under section 469 to 469c-1 of this title and shall submit an annual report at the end of each fiscal year to the Committee on Natural Resources of the House of Representatives and Committee on Energy and Natural Resources of the Senate indicating the scope and effectiveness of the program, the specific projects surveyed and the results produced, and the costs incurred by the Federal Government as a result thereof.

469b. Administration; contract or agreements; services of experts, consultants, or organizations; acceptance of funds.

In the administration of section 469 to 469c-1 of this title, the Secretary may-

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

(2) obtain the services of experts and consultants or organizations thereof in accordance with section 3109 of title 5; and
(3) accept and utilize funds made available for salvage archeological purposes by any private person or corporation or transferred to him by any Federal agency.

469c. Assistance to Secretary of the Interior by Federal agencies responsible for construction projects; authorization of appropriations.

(a) Assistance of Federal agencies.

To carry out the purposes of section 460 to 469c-1 of this title, any Federal agency responsible for a construction project may assist the Secretary and/or it may transfer to him such funds as may be agreed upon, but not more than 1 per centum of the total amount authorized to be appropriated for such project, except that the 1 per centum limitation of this section shall not apply in the event that the project involves $50,000 or less: Provided, That the costs of such survey, recovery, analysis, and publication shall be considered nonreimbursable project costs.

(b) Authorization of appropriations for preservation of data.

For the purposes of Section 469a-1(b) of this title, there are authorized to be appropriated such sums as may be necessary, but not more than $500,000 in fiscal year 1974; $1,000,000 in fiscal year 1975; $1,500,000 in fiscal year 1976; $1,500,000 in fiscal year 1977; $1,500,000 in fiscal year 1978; $500,000 in fiscal year 1979; $1,000,000 in fiscal year 1980; $1,500,000 in fiscal year 1981; $1,500,000 in fiscal year 1982; and $1,500,000 in fiscal year 1983.

(c) Authorization of appropriations for surveys and investigations.

For the purposes of section 469a-2(a) of this title, there are authorized to be appropriated not more than $2,000,000 in fiscal year 1974; $2,000,000 in fiscal year 1975; $3,000,000 in fiscal year 1976; $3,000,000 in fiscal year 1977; $3,000,000 in fiscal year 1978; $3,000,000 in fiscal year 1979; $3,000,000 in fiscal year 1980; $3,500,000 in fiscal year 1981; $3,500,000 in fiscal year 1982; and $4,000,000 in fiscal year 1983.

(d) Availability of appropriations.

Beginning fiscal year 1979, sums appropriated for purposes of this section shall remain available until expended.

469c-1. "State" defined.

As used in sections 469 to 469c-1 of this title, the term "State" includes the several States of the Union, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands; Guam; American Samoa; the Trust Territory of the Pacific Islands; and the Commonwealth
Sec. 65.1 Purpose and authority.

The purpose of the National Historic Landmarks Program is to identify and designate National Historic Landmarks, and encourage the long range preservation of nationally significant properties that illustrate or commemorate the history and prehistory of the United States. These regulations set forth the criteria for establishing national significance and the procedures used by the Department of the Interior for conducting the National Historic Landmarks Program.

- (a) In the Historic Sites Act of 1935 (45 Stat. 666, 16 U.S.C. 461 et seq.) the Congress declared that it is a national policy to preserve for public use historic sites, buildings and objects of national significance for the inspiration and benefit of the people of the United States and

- (b) To implement the policy, the Act authorizes the Secretary of the Interior to perform the following duties and functions, among others:

  o (1) To make a survey of historic and archeological sites, buildings and objects for the purpose of determining which possess exceptional value as commemorating or illustrating
the history of the United States;

- (2) To make necessary investigations and researches in the
  United States relating to particular sites, buildings or objects
  to obtain true and accurate historical and archeological facts
  and information concerning the same; and

- (3) To erect and maintain tablets to mark or commemorate
  historic or prehistoric places and events of national historical
  or archeological significance.

- (c) The National Park Service (NPS) administers the National
  Historic Landmarks Program on behalf of the Secretary.

**TOP**

**Sec. 65.2 Effects of designation.**

- (a) The purpose of the National Historic Landmarks Program is to
  focus attention on properties of exceptional value to the nation as a
  whole rather than to a particular State or locality. The program
  recognizes and promotes the preservation efforts of Federal, State
  and local agencies, as well as of private organizations and
  individuals and encourages the owners of landmark properties to
  observe preservation precepts.

- (b) Properties designated as National Historic Landmarks are listed
  in the National Register of Historic Places upon designation as
  National Historic Landmarks. Listing of private property on the
  National Register does not prohibit under Federal law or regulations
  any actions which may otherwise be taken by the property owner
  with respect to the property.

- (c) Specific effects of designation are:

  - (1) The National Register was designed to be and is
    administered as a planning tool. Federal agencies undertaking
    a project having an effect on a listed or eligible property must
    provide the Advisory Council on Historic Preservation a
    reasonable opportunity to comment pursuant to section 106 of
    the National Historic Preservation Act of 1966, as amended.
    The Advisory Council has adopted procedures concerning,
    inter alia, their commenting responsibility in 36 CFR part
    800.

  - (2) Section 110(f) of the National Historic Preservation Act of
    1966, as amended, requires that before approval of any
    Federal undertaking which may directly and adversely affect
any National Historic Landmark, the head of the responsible Federal agency shall, to the maximum extent possible, undertake such planning and actions as may be necessary to minimize harm to such landmark, and shall afford the Advisory Council a reasonable opportunity to comment on undertaking.

- (3)Listing in the National Register makes property owners eligible to be considered for Federal grants-in-aid and loan guarantees (when implemented) for historic preservation.

- (4) If a property is listed in the National Register, certain special Federal income tax provisions may apply to the owners of the property pursuant to section 2124 of the Tax Reform Act of 1976, the Economic Recovery Tax Act of 1981 and the Tax Treatment Extension Act of 1980.

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

- (6) Section 8 of the National Park System General Authorities Act of 1970, as amended (90 Stat. 1940, 16 U.S.C. 1-5), directs the Secretary to prepare an annual report to Congress which identifies all National Historic Landmarks that exhibit known or anticipated damage or threats to the integrity of their resources. In addition, National Historic Landmarks may be studied by NPS for possible recommendation to Congress for inclusion in the National Park System.

- (7) Section 9 of the Mining in the National Parks Act of 1976 (90 Stat. 1342, 16 U.S.C. 1980) directs the Secretary of the Interior to submit to the Advisory Council a report on any surface mining activity which the Secretary has determined may destroy a National Historic Landmark in whole or in part, and to request the advisory Council's advice on alternative measures to mitigate or abate such activity.

**Sec. 65.3 Definitions.**

As used in this rule:

- (a) Advisory Council means the Advisory Council on Historic Preservation, established by the National Historic Preservation Act
EXECUTIVE ORDER

FEDERAL ACTIONS TO ADDRESS ENVIRONMENTAL JUSTICE IN MINORITY POPULATIONS AND LOW-INCOME POPULATIONS

By the authority vested in me as President by the Constitution and the laws of the United States of America, it is hereby ordered as follows:

Section 1-1. Implementation.

1-101. Agency Responsibilities. To the greatest extent practicable and permitted by law, and consistent with the principles set forth in the report on the National Performance Review, each Federal agency shall make achieving environmental justice part of its mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of its programs, policies, and activities on minority populations and low-income populations in the United States and its territories and possessions, the District of Columbia, the Commonwealth of Puerto Rico, and the Commonwealth of the Mariana Islands.

1-102. Creation of an Interagency Working Group on Environmental Justice. (a) Within 3 months of the date of this order, the Administrator of the Environmental Protection Agency ("Administrator") or the Administrator's designee shall convene an interagency Federal Working Group on Environmental Justice ("Working Group"). The Working Group shall comprise the heads of the following executive agencies and offices, or their designees: (a) Department of Defense; (b) Department of Health and Human Services; (c) Department of Housing and Urban Development; (d) Department of Labor; (e) Department of Agriculture; (f) Department of Transportation; (g) Department of Justice; (h) Department of the Interior; (i) Department of Commerce; (j) Department of Energy; (k) Environmental Protection Agency; (l) Office of Management and Budget; (m) Office of Science and Technology Policy; (n) Office of the Deputy Assistant to the President for Environmental Policy; (o) Office of the Assistant to the President for Domestic Policy; (p) National Economic Council; (q) Council of Economic Advisers; and (r) other such Government officials as the President may designate. The Working Group shall report to the President through the Deputy through the Deputy Assistant to the President for Environmental Policy and the Assistant to the President for Domestic Policy.

(b) The Working Group shall: (1) provide guidance to Federal agencies on criteria for identifying disproportionately high and adverse human health or environmental effects on minority populations and low-income populations.

(2) coordinate with, provide guidance to, and serve as a clearinghouse for, each Federal agency as it develops an environmental justice strategy as required by section 1-103 of this order, in order to ensure that the administration, interpretation and enforcement of programs, activities and policies are undertaken in a consistent manner;

(3) assist in coordinating research by, and stimulating cooperation among, the Environmental Protection Agency, the Department of Health and Human Services, the Department of Housing and Urban
Development, and other agencies conducting research or other activities in accordance with section 3-3 of this order;

(4) assist in coordinating data collection, required by this order;

(5) examine existing data and studies on environmental justice;

(6) hold public meetings as required in section 5-502(d) of this order; and

(7) develop interagency model projects on environmental justice that evidence cooperation among Federal agencies.

1-103. Development of Agency Strategies. (a) Except as provided in section 6-605 of this order, each Federal agency shall develop an agency-wide environmental justice strategy, as set forth in subsections (b)–(e) of this section that identifies and addresses disproportionately high and adverse human health or environmental effects of its programs, policies, or activities on minority populations and low-income populations. The environmental justice strategy shall list programs, policies, planning and public participation practices, enforcement and/or rulemakings related to human health or the environment that should be revised to, at a minimum: (1) promote enforcement of all health and environmental statutes in areas with minority populations and low-income populations; (2) ensure greater public participation; (3) improve research and data collection relating to the health of and environment of minority populations and low-income populations; and (4) identify differential patterns of consumption of natural resources among minority populations and low-income populations. In addition, the environmental justice strategy shall include, where appropriate, a timetable for undertaking identified revisions and consideration of economic and social implications of the revisions.

(b) Within 4 months of the date of this order, each Federal agency shall identify an internal administrative process for developing its environmental justice strategy, and shall inform the Working Group of the process.

(c) Within 6 months of the date of this order, each Federal agency shall provide the Working Group with an outline of its proposed environmental justice strategy.

(d) Within 10 months of the date of this order, each Federal agency shall provide the Working Group with its proposed environmental justice strategy.

(e) Within 12 months of the date of this order, each Federal agency shall finalize its environmental justice strategy and provide a copy and written description of its strategy to the Working Group. During the 12-month period from the date of this order, each Federal agency, as part of its environmental justice strategy, shall identify several specific projects that can be promptly undertaken to address particular concerns identified during the development of the proposed environmental justice strategy, and a schedule for implementing those projects.

(f) Within 24 months of the date of this order, each Federal agency shall report to the Working Group on its progress in implementing its agency-wide environmental justice strategy.

(g) Federal agencies shall provide additional periodic reports to the Working Group.

1-104. Reports to the President. Within 14 months of the date of this order, the Working Group shall submit to the President, through the Office of the Deputy Assistant to the President for Environmental
Policy and the Office of the Assistant to the President for Domestic Policy, a report that describes the implementation of this order, and includes the final environmental justice strategies described in section 1-103(e) of this order.

Sec. 2-2. Federal Agency Responsibilities for Federal Programs. Each Federal agency shall conduct its programs, policies, and activities that substantially effect human health or the environment, in a manner that ensures that such programs, policies, and activities do not have the effect of excluding persons (including populations) from participation in, denying persons (including populations) the benefits of, or subjecting persons (including populations) to discrimination under, such programs, policies, and activities, because of their race, color, or national origin.

Sec. 3-3. Research, Data Collection, and Analysis.

3-301. Human Health and Environmental Research and Analysis. (a) Environmental human health research, whenever practicable and appropriate, shall include diverse segments of the population in epidemiological and clinical studies, including segments at high risk from environmental hazards, such as minority populations, low-income populations and workers who may be exposed to substantial environmental hazards.

(b) Environmental human health analyses, whenever practicable and appropriate, shall identify multiple and cumulative exposures.

(c) Federal agencies shall provide minority populations and low-income populations the opportunity to comment on the development and design of research strategies undertaken pursuant to this order.

3-302. Human Health and Environmental Data Collection and Analysis. To the extent permitted by existing law, including the Privacy Act, as amended (5 U.S.C. section 552a): (a) each Federal agency, whenever practicable and appropriate, shall collect, maintain, and analyze information assessing and comparing environmental and human health risks borne by populations identified by race, national origin, or income. To the extent practicable and appropriate, Federal agencies shall use this information to determine whether their programs, policies, and activities have disproportionately high and adverse human health or environmental effects on minority populations and low-income populations.

(b) In connection with the development and implementation of agency strategies in section 1-103 of this order, each Federal agency, whenever practicable and appropriate, shall collect, maintain and analyze information on the race, national origin, income level, and other readily accessible and appropriate information for areas surrounding facilities or sites expected to have a substantial environmental, human health, or economic effect on the surrounding populations, when such facilities or sites become the subject of a substantial Federal environmental administrative or judicial action. Such information shall be made available to the public, unless prohibited by law: and

(c) Each Federal agency, whenever practicable and appropriate, shall collect, maintain, and analyze information on the race, national origin, income level, and other readily accessible and appropriate information for areas surrounding Federal facilities that are: (1) subject to the reporting requirements under the Emergency Planning and Community Right-to-Know Act, 42 U.S.C. section 11001-11050 as mandated in Executive Order No. 12856; and (2) expected to have a substantial environmental, human health, or economic effect on surrounding populations.

(d) In carrying out the responsibilities in this section, each Federal agency, whenever practicable and appropriate, shall share information and eliminate unnecessary duplication of efforts through the use of
existing data systems and cooperative agreements among Federal agencies and with States, local, and tribal governments.

**Sec. 4-4. Subsistence Consumption of Fish and Wildlife.**

4-401. Consumption Patterns. In order to assist in identifying the need for ensuring protection of populations with differential patterns of subsistence consumption of fish and wildlife, Federal agencies, whenever practicable and appropriate, shall collect, maintain, and analyze information on the consumption patterns of populations who principally rely on fish and/or wildlife for subsistence. Federal agencies shall communicate to the public the risk of those consumption patterns.

4-402. Guidance. Federal agencies, whenever practicable and appropriate, shall work in a coordinated manner to publish guidance reflecting the latest scientific information available concerning methods for evaluating the human health risks associated with the consumption of pollutant-bearing fish or wildlife. Agencies shall consider such guidance in developing their policies and rules.

**Sec. 5-5. Public Participation and Access to Information.** (a) The public may submit recommendations to Federal agencies relating to the incorporation of environmental justice principles into Federal agency programs or policies. Each Federal agency shall convey such recommendations to the Working Group.

(b) Each Federal agency may, whenever practicable and appropriate, translate crucial public documents, notices and hearings relating to human health or the environment for limited English-speaking populations.

(c) Each Federal agency shall work to ensure that public documents, notices, and hearings relating to human health or the environment are concise, understandable, and readily accessible to the public.

(d) The Working Group shall hold public meetings, as appropriate, for the purpose of fact-finding, receiving public comments, and conducting inquiries concerning environmental justice. The Working Group shall prepare for public review a summary of the contents and recommendations discussed at the public meetings.

**Sec. 6-6. General Provisions.**

6-601. Responsibility for Agency Implementation. The head of each Federal agency shall be responsible for ensuring compliance with this order. Each Federal agency shall conduct internal reviews and take such other steps as may be necessary to monitor compliance with this order.

6-602. Executive Order No. 12250. This Executive Order is intended to supplement but not supersede Executive Order No. 12250, which requires consistent and effective implementation of various laws prohibiting discriminatory practices in programs receiving Federal financial assistance. Nothing herein shall limit the effect or mandate of Executive Order No. 12250.

6-603. Executive Order No. 12875. This Executive Order is not intended to limit the effect or mandate of Executive Order No. 12875.

6-604. Scope. For the purposes of this order, Federal agency means any agency on the Working Group, and such other agencies as may be designated by the President, that conducts any Federal program or activity that substantially affects human health or the environment. Independent agencies are requested to comply with the provisions of this order.
6-605. Petitions for Exemptions. The head of a Federal agency may petition the President for an exemption from the requirements of this order on the grounds that all or some of the petitioning agency's programs or activities should not be subject to the requirements of this order.

6-606. Native American Programs. Each Federal agency responsibility set forth under this order shall apply equally to Native American programs. In addition, the Department of the Interior, in coordination with the Working Group, and after consultation with tribal leaders, shall coordinate steps to be taken pursuant to this order that address Federally-recognized Indian tribes.

6-607. Costs. Unless otherwise provided by law, Federal agencies shall assume the financial costs of complying with this order.

6-608. General. Federal agencies shall implement this order consistent with, and to the extent permitted by, existing law.

6-609. Judicial Review. This order is intended only to improve the internal management of the executive branch and is not intended to, nor does it create any right, benefit, or trust responsibility, substantive or procedural, enforceable at law or equity by a party against the United States, its agencies, its officers, or any person. This order shall not be construed to create any right to judicial review involving the compliance or noncompliance of the United States, its agencies, its officers, or any other person with this order.

WILLIAM J. CLINTON

THE WHITE HOUSE


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For Immediate Release

May 21, 1996

EXECUTIVE ORDER 13006

LOCATING FEDERAL FACILITIES ON HISTORIC PROPERTIES IN OUR NATION'S CENTRAL CITIES

By the authority vested in me as President by the Constitution and the laws of the United States of America, including the National Historic Preservation Act (16 U.S.C. 470 et seq.) and the Public Buildings Cooperative Use Act of 1976 (90 Stat. 2505), and in furtherance of and consistent with Executive Order No. 12072 of August 16, 1978, and Executive Order No. 11593 of May 13, 1971, it is hereby ordered as follows:

Section 1. Statement of Policy. Through the Administration's community empowerment initiatives, the Federal Government has undertaken various efforts to revitalize our central cities, which have historically served as the centers for growth and commerce in our metropolitan areas. Accordingly, the Administration hereby reaffirms the commitment set forth in Executive Order No. 12072 to strengthen our Nation's cities by encouraging the location of Federal facilities in our central cities. The Administration also reaffirms the commitments set forth in the National Historic Preservation Act to provide leadership in the preservation of historic resources, and in the Public Buildings Cooperative Use Act of 1976 to acquire and utilize space in suitable buildings of historic, architectural, or cultural significance.

To this end, the Federal Government shall utilize and maintain, wherever operationally appropriate and economically prudent, historic properties and districts, especially those located in our central business areas. When implementing these policies, the Federal Government shall institute practices and procedures that are sensible, understandable, and compatible with current authority and that impose the least burden on, and provide the maximum benefit to, society.

Sec. 2. Encouraging the Location of Federal Facilities on Historic Properties in Our Central Cities. When operationally appropriate and economically prudent, and subject to the requirements of section 601 of title VI of the Rural Development Act of 1972, as amended (42 U.S.C. 3122), and Executive Order No. 12072, when locating Federal facilities, Federal agencies shall give first consideration to historic properties within historic districts. If no such property is suitable, then Federal agencies shall consider other developed or undeveloped sites within historic districts. Federal agencies shall then consider historic properties outside
of historic districts, if no suitable site within a district exists. Any rehabilitation or construction that is undertaken pursuant to this order must be architecturally compatible with the character of the surrounding historic district or properties.

Sec. 3. Identifying and Removing Regulatory Barriers. Federal agencies with responsibilities for leasing, acquiring, locating, maintaining, or managing Federal facilities or with responsibilities for the planning for, or managing of, historic resources shall take steps to reform, streamline, and otherwise minimize regulations, policies, and procedures that impede the Federal Government's ability to establish or maintain a presence in historic districts or to acquire historic properties to satisfy Federal space needs, unless such regulations, policies, and procedures are designed to protect human health and safety or the environment. Federal agencies are encouraged to seek the assistance of the Advisory Council on Historic Preservation when taking these steps.

Sec. 4. Improving Preservation Partnerships. In carrying out the authorities of the National Historic Preservation Act, the Secretary of the Interior, the Advisory Council on Historic Preservation, and each Federal agency shall seek appropriate partnerships with States, local governments, Indian tribes, and appropriate private organizations with the goal of enhancing participation of these parties in the National Historic Preservation Program. Such partnerships should embody the principles of administrative flexibility, reduced paperwork, and increased service to the public.

Sec. 5. Judicial Review. This order is not intended to create, nor does it create, any right or benefit, substantive or procedural, enforceable at law by a party against the United States, its agencies or instrumentalities, its officers or employees, or any other person.

WILLIAM J. CLINTON

THE WHITE HOUSE,
May 21, 1996.

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Executive Order 13007 of May 24, 1996

Indian Sacred Sites

By the authority vested in me as President by the Constitution and the laws of the United States, in furtherance of Federal treaties, and in order to protect and preserve Indian religious practices, it is hereby ordered:

Section 1. Accommodation of Sacred Sites. (a) In managing Federal lands, each executive branch agency with statutory or administrative responsibility for the management of Federal lands shall, to the extent practicable, permitted by law, and not clearly inconsistent with essential agency functions, (1) accommodate access to and ceremonial use of Indian sacred sites by Indian religious practitioners and (2) avoid adversely affecting the physical integrity of such sacred sites. Where appropriate, agencies shall maintain the confidentiality of sacred sites.

(b) For purposes of this order:

(i) “Federal lands” means any land or interests in land owned by the United States, including leasehold interests held by the United States, except Indian trust lands;

(ii) “Indian tribe” means an Indian or Alaska Native tribe, band, nation, pueblo, village, or community that the Secretary of the Interior acknowledges to exist as an Indian tribe pursuant to Public Law No. 103-454, 108 Stat. 4791, and “Indian” refers to a member of such an Indian tribe; and

(iii) “Sacred site” means any specific, discrete, narrowly delineated location on Federal land that is identified by an Indian tribe, or Indian individual determined to be an appropriately authoritative representative of an Indian religion, as sacred by virtue of its established religious significance to, or ceremonial use by, an Indian religion; provided that the tribe or appropriately authoritative representative of an Indian religion has informed the agency of the existence of such a site.

Sec. 2. Procedures. (a) Each executive branch agency with statutory or administrative responsibility for the management of Federal lands shall, as appropriate, promptly implement procedures for the purposes of carrying out the provisions of section 1 of this order, including, where practicable and appropriate, procedures to ensure reasonable notice is provided of proposed actions or land management policies that may restrict future access to or ceremonial use of, or adversely affect the physical integrity of, sacred sites. In all actions pursuant to this section, agencies shall comply with the Executive memorandum of April 29, 1994, “Government-to-Government Relations with Native American Tribal Governments.”

(b) Within 1 year of the effective date of this order, the head of each executive branch agency with statutory or administrative responsibility for the management of Federal lands shall report to the President, through the Assistant to the President for Domestic Policy, on the implementation of this order. Such reports shall address, among other things, (i) any changes necessary to accommodate access to and ceremonial use of Indian sacred sites; (ii) any changes necessary to avoid adversely affecting the physical integrity of Indian sacred sites; and (iii) procedures implemented or proposed to facilitate consultation with appropriate Indian tribes and religious leaders and the expeditious resolution of disputes relating to agency action on Federal lands that may adversely affect access to, ceremonial use of, or the physical integrity of sacred sites.
Sec. 3. Nothing in this order shall be construed to require a taking of vested property interests. Nor shall this order be construed to impair enforceable rights to use of Federal lands that have been granted to third parties through final agency action. For purposes of this order, "agency action" has the same meaning as in the Administrative Procedure Act (5 U.S.C. 551(13)).

Sec. 4. This order is intended only to improve the internal management of the executive branch and is not intended to, nor does it, create any right, benefit, or trust responsibility, substantive or procedural, enforceable at law or equity by any party against the United States, its agencies, officers, or any person.

William J. Clinton

THE WHITE HOUSE,
May 24, 1996.
By the authority vested in me as President by the Constitution and the laws of the United States of America, and in order to establish regular and meaningful consultation and collaboration with tribal officials in the development of Federal policies that have tribal implications, to strengthen the United States government-to-government relationships with Indian tribes, and to reduce the imposition of unfunded mandates upon Indian tribes; it is hereby ordered as follows:

Section 1. Definitions. For purposes of this order:
(a) “Policies that have tribal implications” refers to regulations, legislative comments or proposed legislation, and other policy statements or actions that have substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

(b) “Indian tribe” means an Indian or Alaska Native tribe, band, nation, pueblo, village, or community that the Secretary of the Interior acknowledges to exist as an Indian tribe pursuant to the Federally Recognized Indian Tribe List Act of 1994, 25 U.S.C. 479a.

(c) “Agency” means any authority of the United States that is an “agency” under 44 U.S.C. 3502(1), other than those considered to be independent regulatory agencies, as defined in 44 U.S.C. 3502(5).

(d) “Tribal officials” means elected or duly appointed officials of Indian tribal governments or authorized intertribal organizations.

Sec. 2. Fundamental Principles. In formulating or implementing policies that have tribal implications, agencies shall be guided by the following fundamental principles:
(a) The United States has a unique legal relationship with Indian tribal governments as set forth in the Constitution of the United States, treaties, statutes, Executive Orders, and court decisions. Since the formation of the Union, the United States has recognized Indian tribes as domestic dependent nations under its protection. The Federal Government has enacted numerous statutes and promulgated numerous regulations that establish and define a trust relationship with Indian tribes.

(b) Our Nation, under the law of the United States, in accordance with treaties, statutes, Executive Orders, and judicial decisions, has recognized the right of Indian tribes to self-government. As domestic dependent nations, Indian tribes exercise inherent sovereign powers over their members and territory. The United States continues to work with Indian tribes on a government-to-government basis to address issues concerning Indian tribal self-government, tribal trust resources, and Indian tribal treaty and other rights.

(c) The United States recognizes the right of Indian tribes to self-government and supports tribal sovereignty and self-determination.

Sec. 3. Policymaking Criteria. In addition to adhering to the fundamental principles set forth in section 2, agencies shall adhere, to the extent permitted by law, to the following criteria when formulating and implementing policies that have tribal implications:
(a) Agencies shall respect Indian tribal self-government and sovereignty, honor tribal treaty and other rights, and strive to meet the responsibilities that arise from the unique legal relationship between the Federal Government and Indian tribal governments.

(b) With respect to Federal statutes and regulations administered by Indian tribal governments, the Federal Government shall grant Indian tribal governments the maximum administrative discretion possible.

(c) When undertaking to formulate and implement policies that have tribal implications, agencies shall:

(1) encourage Indian tribes to develop their own policies to achieve program objectives;

(2) where possible, defer to Indian tribes to establish standards; and

(3) in determining whether to establish Federal standards, consult with tribal officials as to the need for Federal standards and any alternatives that would limit the scope of Federal standards or otherwise preserve the prerogatives and authority of Indian tribes.

Sec. 4. Special Requirements for Legislative Proposals. Agencies shall not submit to the Congress legislation that would be inconsistent with the policymaking criteria in Section 3.

Sec. 5. Consultation. (a) Each agency shall have an accountable process to ensure meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications. Within 30 days after the effective date of this order, the head of each agency shall designate an official with principal responsibility for the agency’s implementation of this order. Within 60 days of the effective date of this order, the designated official shall submit to the Office of Management and Budget (OMB) a description of the agency’s consultation process.

(b) To the extent practicable and permitted by law, no agency shall promulgate any regulation that has tribal implications, that imposes substantial direct compliance costs on Indian tribal governments, and that is not required by statute, unless:

(1) funds necessary to pay the direct costs incurred by the Indian tribal government or the tribe in complying with the regulation are provided by the Federal Government; or

(2) the agency, prior to the formal promulgation of the regulation,

(A) consulted with tribal officials early in the process of developing the proposed regulation;

(B) in a separately identified portion of the preamble to the regulation as it is to be issued in the Federal Register, provides to the Director of OMB a tribal summary impact statement, which consists of a description of the extent of the agency’s prior consultation with tribal officials, a summary of the nature of their concerns and the agency’s position supporting the need to issue the regulation, and a statement of the extent to which the concerns of tribal officials have been met; and

(C) makes available to the Director of OMB any written communications submitted to the agency by tribal officials.

(c) To the extent practicable and permitted by law, no agency shall promulgate any regulation that has tribal implications and that preempts tribal law unless the agency, prior to the formal promulgation of the regulation,

(1) consulted with tribal officials early in the process of developing the proposed regulation;

(2) in a separately identified portion of the preamble to the regulation as it is to be issued in the Federal Register, provides to the Director of OMB a tribal summary impact statement, which consists of a description of the extent of the agency’s prior consultation with tribal officials, a summary of the nature of their concerns and the agency’s position supporting the
need to issue the regulation, and a statement of the extent to which the concerns of tribal officials have been met; and

(3) makes available to the Director of OMB any written communications submitted to the agency by tribal officials.

(d) On issues relating to tribal self-government, tribal trust resources, or Indian tribal treaty and other rights, each agency should explore and, where appropriate, use consensual mechanisms for developing regulations, including negotiated rulemaking.

Sec. 6. Increasing Flexibility for Indian Tribal Waivers.

(a) Agencies shall review the processes under which Indian tribes apply for waivers of statutory and regulatory requirements and take appropriate steps to streamline those processes.

(b) Each agency shall, to the extent practicable and permitted by law, consider any application by an Indian tribe for a waiver of statutory or regulatory requirements in connection with any program administered by the agency with a general view toward increasing opportunities for utilizing flexible policy approaches at the Indian tribal level in cases in which the proposed waiver is consistent with the applicable Federal policy objectives and is otherwise appropriate.

(c) Each agency shall, to the extent practicable and permitted by law, render a decision upon a complete application for a waiver within 120 days of receipt of such application by the agency, or as otherwise provided by law or regulation. If the application for waiver is not granted, the agency shall provide the applicant with timely written notice of the decision and the reasons therefor.

(d) This section applies only to statutory or regulatory requirements that are discretionary and subject to waiver by the agency.

Sec. 7. Accountability.

(a) In transmitting any draft final regulation that has tribal implications to OMB pursuant to Executive Order 12866 of September 30, 1993, each agency shall include a certification from the official designated to ensure compliance with this order stating that the requirements of this order have been met in a meaningful and timely manner.

(b) In transmitting proposed legislation that has tribal implications to OMB, each agency shall include a certification from the official designated to ensure compliance with this order that all relevant requirements of this order have been met.

(c) Within 180 days after the effective date of this order the Director of OMB and the Assistant to the President for Intergovernmental Affairs shall confer with tribal officials to ensure that this order is being properly and effectively implemented.

Sec. 8. Independent Agencies. Independent regulatory agencies are encouraged to comply with the provisions of this order.

Sec. 9. General Provisions. (a) This order shall supplement but not supersede the requirements contained in Executive Order 12866 (Regulatory Planning and Review), Executive Order 12988 (Civil Justice Reform), OMB Circular A–19, and the Executive Memorandum of April 29, 1994, on Government-to-Government Relations with Native American Tribal Governments.

(b) This order shall complement the consultation and waiver provisions in sections 6 and 7 of Executive Order 13132 (Federalism).

(c) Executive Order 13084 (Consultation and Coordination with Indian Tribal Governments) is revoked at the time this order takes effect.

(d) This order shall be effective 60 days after the date of this order.
Sec. 10. Judicial Review. This order is intended only to improve the internal management of the executive branch, and is not intended to create any right, benefit, or trust responsibility, substantive or procedural, enforceable at law by a party against the United States, its agencies, or any person.

THE WHITE HOUSE,
November 6, 2000.

[FR Doc. 00-29003
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Billing code 3195-01-P
Government-to-Government Consultation Policy

Pursuant to the President's Executive Order 13175 of November 6, 2000, and in consultation with tribes, the following government-to-government consultation policy is issued. This policy will remain in effect until such time it is published in the Indian Affairs Manual (IAM) or is superceded by another policy.

1. INTRODUCTION

More than 550 American Indian tribes in the United States are recognized by the Secretary of the Interior as having a special legal relationship with the United States. This legal relationship is most often called the government-to-government relationship. It is through this relationship that the Bureau of Indian Affairs has a duty to consult with tribal governments. The following policy illustrates the guidelines that the Bureau of Indian Affairs will follow for consultation with tribal governments.

2. BACKGROUND

The government-to-government relationship is not new, but has strong roots that took hold with the very earliest contact between the American Indians and the first European settlers. The settlers and the tribal leaders dealt with each other as separate sovereigns and that relationship is the foundation of all dealings that have taken place between the United States and Indian tribes throughout the history of the Nation. This Indian policy has found its way into federal statutes and case law and into Executive Orders. As nations separate from the United States, the internal affairs of tribes are the responsibility of the tribal entity and are not to be tampered or interfered with by the United States.

The Bureau of Indian Affairs is the lead federal agency charged with carrying out the United States's relationship with Indian tribal governments. It is also responsible for overseeing the trust obligations that the United States has to protect tribal property and resources. Thus, most of the contacts between tribal government officials and United States government officials take place within the various offices of the Bureau of Indian Affairs. The Bureau has numerous local or agency offices that deal most closely with day-to-day issues facing tribal governments. The Bureau also has 12 regional or area offices; its Central office is located in Washington, D.C. within the U.S. Department of the Interior. At the Department of the Interior's Central Office, tribal leaders often work closely with political officials in the Office of the Secretary of the Interior and in the Office of the Assistant Secretary - Indian Affairs.

Tribal leaders also have significant government-to-government contact with officials of the local, regional and central offices of other Department of the Interior agencies, including the Fish and Wildlife Service, National Park Service, Bureau of Land Management, Minerals Management Service, Bureau of Reclamation, and Office of Surface Mining.

3. PURPOSE

The purpose of this consultation policy is to set forth appropriate guidelines that are understood and adhered to by all parties. It is vital to the health of the government-to-government relationship that all contacts and consultation with Indian tribal leaders throughout the Bureau be conducted in a professional and respectful manner and in accordance with the following guidelines. Only by using such guidelines can misunderstandings
be avoided and the tribes with the United States can move Indian policy forward.

4. DEFINITIONS

"Consultation" means a process of government-to-government dialogue between the Bureau of Indian Affairs and Indian tribes regarding proposed Federal actions in a manner intended to secure meaningful and timely tribal input. Consultation includes that Indian tribes are:

1. to receive timely notification of the formulated or proposed Federal action;
2. to be informed of the potential impact on Indian tribes of the formulated or proposed Federal action;
3. to be informed of those Federal officials who may make the final decisions with respect to the Federal action;
4. to have the input and recommendations of Indian tribes on such proposed action be fully considered by those officials responsible for the final decision; and
5. to be advised of the rejection of tribal recommendations on such action from those Federal officials making such decisions and the basis for such rejections.

Consultation does not mean merely the right of tribal officials, as members of the general public, to be consulted, or to provide comments, under the Administrative Procedures Act or other Federal law of general applicability.

"Federal action" means regulations, legislative comments or proposed legislation, the budget, and other police statements or actions that have substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

Federal action includes the development of federal policies under which the tribe must take voluntary action to trigger application of the policy.

Indian tribe means an Indian or Alaska Native tribe, band, nation, pueblo, village or community that the Secretary of the Interior acknowledges to exist as an Indian tribe pursuant to section 479a of title 25, United States Code.

Legislation means proposed legislation or legislative comments to be presented to Congress for enactment that will affect tribal governments, communities, members, economies, trust resources or assets, treaty rights, sacred sites, public health, safety welfare or other interest.

Collaboration means the act of working jointly toward a common objective.

Tribal government means the governing authority of an Indian tribe as recognized by the Department of the Interior or authorized tribal organization.

5. PRINCIPLES

In formulating and implementing policies affecting Indian tribal governments, the Bureau will be guided by the following principles:
1. The United States has a unique legal relationship with Indian tribal governments as set forth in the Constitution of the United States, treaties, statutes, executive orders, and court decisions.

2. The United States recognizes the ongoing right of Indian tribes to self-government and supports tribal sovereignty and self-determination and continues to work with Indian tribes on a government-to-government basis concerning Indian tribal self-government, trust resources, and Indian tribal treaty and other rights.

3. Federal actions shall be guided by respect for Indian tribal self-government and sovereignty, for tribal treaty rights, and for responsibilities that arise from the unique legal relationship between the Federal Government and Indian tribal governments.

4. Federal actions shall favor maximum tribal participation with the goal of consultation and collaboration in federal decision making.

5. Federal action shall defer to the laws and policies established by Indian tribes to the extent permitted by law.

6. The Bureau shall maximize the use of technology to facilitate interactive exchanges with tribes and notify affected tribes that written comments are permitted and will be considered.

VI. STEP-BY-STEP THROUGH THE CONSULTATION PROCESS

Consultation between the Bureau of Indian Affairs and the Indian tribes shall conform to the following procedures. These procedures allow flexibility and discretion to the Bureau depending on the matter under consultation. The three major procedural steps of consultation are:

A. Pre-Decisional Scoping

B. Developing the Bureau Proposal

C. Implementation of Final Federal Action

A. Pre-Decisional Scoping

Consultation should be initiated as early in the Bureau's decision making process as possible. Consultation should begin when the Bureau knows enough about a proposed action to present a coherent proposal and a suggested initial list of issues.

Early consultation with tribal leadership is vital for several reasons. Without early consultation, the Bureau may develop proposals based on an incomplete and anecdotal understanding of the issues that surround a particular matter. As a result, Bureau proposals often create severe unintended consequences for tribal governments. Issues in Indian country are often more complex than they seem at first, in part because of the great diversity among tribes and the circumstances they face, as well as the long history surrounding the development of federal Indian policy.

An open process in the initial stages creates better and more efficient consultation. For example, early consultation with Tribal governments on the scope and impact of a Bureau proposal may provide the basis for the Bureau determining that no action is necessary. More broadly, pre-draft consultation helps insure that real problems are identified at the beginning and properly studied; that issues that are of no concern do not consume time and effort; that subsequent drafts are balanced and thorough; and that the delays and costs occasioned by redoing an inadequate draft are avoided.

For example, consultation should take place:
1) Before the Bureau begins drafting proposed regulations;

2) Before the Bureau publishes proposed regulations in the Federal Register;

3) Before proposed legislation is introduced at the request of the Bureau; and

4) Before the Bureau formulates or implements policies or other actions having implications for tribes.

1. Start consultation immediately after you have enough information.

Consultation cannot be useful until the Bureau knows enough about the proposed action to identify most of the affected tribes, and to present a coherent proposal and a suggested initial list of issues. Until that time there is no way to explain to the tribes what matters are under consideration. So the first stage is to gather preliminary information, or to compose a clear picture of the proposal if it is being developed by the Bureau.

2. Prepare an information packet.

The Bureau should put together a brief information packet consisting of a description of the proposal, an initial list of issues and impacts, maps, drawings, and any other material or references that can help the interested tribes to understand what is being proposed. At this stage, the purpose of the information is to enable participants to make an intelligent contribution.

3. Design the scoping process for each federal action.

There is no established or required procedure for scoping, but it is intended to be flexible and efficient. The process can be carried out by meetings, telephone conversations, written comments, or a combination of all three. Ad hoc workgroups of tribal leadership and representatives are particularly useful for identifying issues. The issue should drive the process, particularly whether its effect will be national in scope, or related to a region or to a specific tribe. It is important to tailor the type, the timing and the location of any meetings to the proposal at hand. For example:

C A site-specific construction project would be a better candidate for a central scoping meeting.

C A proposal for new regulations that would broadly impact all tribes is a good candidate for a series of regional meetings.

C As a general guide, meetings should not be confined to Washington, D.C. Agencies should try to solicit the views of tribal governments throughout various regions.

An important early step is to determine the level of interest in the proposal by contacting known tribal leaders and by suggesting in the initial scoping notice and information packet that all those who desire a meeting should call to request one.

It may not be possible to plan the whole scoping process at the outset without knowing who all the potential interested tribes are. The process can start with written comments, move on to an informal meeting, and hold further meetings as needed.

4. Identify the participants in the consultation process.

The consultation process is a mechanism for achieving understanding and consensus between federal decision makers and affected tribes with respect to federal actions. Accordingly, the participants should be those decision
makers and the affected tribes.

a) **Bureau Participants.** To ensure that consultation involves the proper Bureau participants the Bureau should:

i) identify, at the outset of the consultation process, Bureau personnel who are expected to have a significant role in the Bureau decision;

ii) communicate the results of subsection i) of this section to tribes involved in the consultation process;

iii) seek tribal input on which Bureau personnel would best serve the purpose of the consultation process; and

iv) to the extent feasible, have those Bureau personnel who are expected to have a significant, high level role in the Bureau decision personally participate in the consultation process.

b) **Tribal Participants.** To ensure that consultation involves the proper tribal participants, the Bureau should:

i) determine, at the outset of the consultation process, whether the Bureau views the proposed federal action as national, regional, subject-matter specific, or tribe-specific in scope;

ii) for proposed federal action which the Bureau views as regional or subject-matter specific, seek additional views, including from national or regional tribal organizations and affected tribes, about whether additional tribes, beyond those identified by the Bureau, may have a significant interest in the proposed federal action;

iii) for proposed federal action identified as regional or national in scope, identify the regional or national tribal organizations that may have expertise, and can facilitate dialogue with affected tribes, with respect to the proposed federal action; and

iv) after notifying all those potentially affected tribes identified under subsections a), b), and c) of this subsection, defer to the expressed views of the tribes regarding who the tribal participants shall be with respect to any consultation

c) **Interagency Cooperation.** The Bureau will seek and promote cooperation and participation with other agencies that have jurisdiction over, special expertise with respect to, or related responsibilities regarding the Bureau's proposed legislation, action or policy.

5. **Issuing notice to tribal governments.**

The Bureau, in any consultation process, shall provide appropriate notification of each stage in the process. Written notice shall be provided where feasible. Where written notice to a tribe is appropriate, the Bureau shall provide notification under this section by mail and/or by facsimile, to the Chair (or other Chief Executive Officer) of the tribe, unless the tribe specifies a different means of notice or unless a different means of notice is required by law. The provisions of this subsection shall apply both to initial notices of the beginning of a consultation process, and to any subsequent notices regarding such a process. Notice may also be provided to interested tribal government organizations and representatives. The Bureau and the tribes have the goal to 1) maximize the use of technology to facilitate interactive exchanges with respect to the proposed decision, and 2) notify affected tribes that written comments are permitted and will be considered.

6. **Conducting a scoping meeting with tribal governments.**

Meetings with tribal governments should follow protocols appropriate for a government-to-government meeting
that are determined by the participants and appropriate for the nature and scope of the meeting. Federal officials and tribal officials should be placed on an equal status in terms of the agenda and the room arrangements. The focus of a scoping meeting is to initiate a thorough identification and review of the issues prior to preparation of a decision, and not to debate the ultimate decisions. The scoping meeting should also identify areas that need further research and gather input from tribal leaders about how the consultation process should proceed.

B. Developing the Bureau Proposal

1. What to do with the comments.

After comments have been received through the scoping process from tribal leadership and appropriate tribal organizations, the Bureau should evaluate them.

A good practice is to develop a post-scoping document in order to share with tribal leaders the preliminary decisions that have been made on what issues to cover. The post-scoping document may be as brief as a list of issues selected for analysis; it may consist of the "scope of work" produced by the Bureau for their own work or for a contractor; or it may be a special document that describes all the issues and explains why they were selected.

2. Allocating work assignments and setting schedules.

Following the scoping process, and the selection of issues to be covered, the Bureau should allocate the decision preparation work among the available resources. Tribal governments and their organizations should be considered as appropriate collaborative partners, particularly where negotiated rule-making or a Tribal Leader Task Force is created. Tribal governments may also be involved in specific research or writing tasks, especially where the tribes have special expertise or jurisdiction by law. A schedule should be set for completion of the work, a project manager should be designated and reviewers assigned.

3. Designing the process for consultation on the draft proposal.

The Bureau shall consult with tribes to ensure meaningful and timely input by tribal officials. Consultation shall occur in a manner that is consistent with the overriding goal of assuring maximum tribal participation and informed federal decision making. The Bureau shall structure each consultation process to the extent feasible to conform to the expressed views of the tribes.

Forms of consultation are as follows:

a. Negotiated Rule Making. The Bureau should use negotiated rule making for developing significant regulations or other formal policies relating to tribal self-government, trust resources, or treaty and other rights, unless such a process would be inappropriate.

b. Tribal Leader Task Force. The Bureau should consult with a Tribal Leader Task Force on matters that impact tribes across the country where negotiated rule making is unavailable or is not desired by the tribes. A Tribal Leader Task Force may also be used, in appropriate circumstances, for consulting with tribes on regional or issue-specific (e.g., timber) matters. In each instance, the composition of the Task Force shall be determined by the Tribes, provided that the Task Force shall be a process open to all tribes and shall to the extent possible represent a cross-section of tribal interests with respect to the matter at issue. The number of meetings to be held, and their location, shall conform to the expressed views of the tribes, to the extent practicable and permitted by law.

c. Series of Open Meetings. The Bureau should consult with tribal leaders in a series of open meetings where appropriate for the action under consideration. Open meetings can be used for national, regional or
subject-matter specific issues.

d. Single Meetings. The Bureau should consult with tribal leaders in a single meeting when appropriate for the federal action under consideration. Single meetings are particularly appropriate for local, regional or single tribe issues.


The Bureau should, at the outset of the consultation process, solicit the views of affected tribes regarding how long the consultation process shall take. The Bureau should make all reasonable efforts to comply with the expressed views of the affected tribes regarding the length of the consultation process, taking into account the level of impact, the scope and the complexity of the issues involved in the proposed federal action. Notwithstanding the overall time for the process, consultation should continue throughout the Bureau's decision making process, except where expressly prohibited by law. If the Bureau determines that the Administrative Procedure Act or other federal law expressly prohibits continued consultation at a specified point in the decision making process, the Bureau should so inform the tribes at the outset of the consultation process.

C. Implementation of Final Federal Action

Prior to finalizing a decision on a federal action, the Bureau shall address issues raised as priority matters during the consultation process in a meaningful and timely manner appropriate to the issue. Bureau decisions significantly impacting Indian tribes shall be made in conformance with the Policy Making Principles, above, in Section V and notice shall be provided to all identified parties. The Bureau shall continue to consult with tribes regarding the manner in which that decision is implemented, its impact on tribes, as well as any need for training or technical assistance on a new regulation or policy.

VII. EDUCATION

The Director, Office of American Indian Trust in consultation with the Assistant Secretary for Policy, Management and Budget will develop a Department-wide tiered employee education plan calculated to provide introductory, intermediate, and advanced training on the subject of federal Indian Affairs and the policy of government-to-government relations with tribes. All levels of training will explain the nature of the diplomacy and protocols to be observed. A mandatory refresher course must be completed by all personnel every two years.

In furtherance of the Indian Self Determination and Education Assistance Act, as amended, the plan will reflect how tribes and tribal organizations can assist the Department in developing and maintaining an effective education program, including curricula and materials.

VIII. MONITORING AND PERFORMANCE

The Bureau will develop an accountable process. The system will include the designation of a Department official who is responsible for day-to-day and quarterly reporting on the status of all consultation issues, as well as annual reporting on the outcome of consultation issues. The system will evidence the integrity of consultation and demonstrate our best faith effort to advance meaningful working relationships with tribes.

This policy shall be implemented in FY 2001, or by the implementation terms of Executive Order No. 13175 regarding consultation with Indian tribal governments, whichever is later.
Assistant Secretary - Indian Affairs

Robert Chicks
Edward K. Thomas
Alma Ransom
Ken Hansen
Stanley Speaks
Colleen F. Cawston
David Lopeman
John Daniels, Jr.
William E. Jones
Ronald Charles
Solomon D. Atkinson
X Brian Cladoosby
Wanda Williford
Mary Anne Hinzman
Randolph M. Feliz
Herman A. Williams, Jr.
Ambrose J. Encinas
Alonzo A. Coby
Velasquez W. Sneezy, Sr.
Section 106 Regulations
(Effective January 11, 2001)

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

[Also available with the preamble (42 pages total) in Adobe Acrobat (PDF) format]

36 CFR PART 800—PROTECTION OF HISTORIC PROPERTIES

Subpart A—Purposes and Participants
Sec.
800.1 Purposes.
800.2 Participants in the Section 106 process.

Subpart B—The Section 106 Process
800.3 Initiation of the Section 106 process.
800.4 Identification of historic properties.
800.5 Assessment of adverse effects.
800.6 Resolution of adverse effects.
800.7 Failure to resolve adverse effects.
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800.9 Council review of Section 106 compliance.
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800.11 Documentation standards.
800.12 Emergency situations.
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Subpart C—Program Alternatives
800.14 Federal agency program alternatives.
800.15 Tribal, State, and local program alternatives. [Reserved]
800.16 Definitions.
Appendix A to Part 800—Criteria for Council involvement in reviewing individual Section 106 cases

Authority: 16 U.S.C. 470s.
Subpart A—Purposes and Participants

Sect. 800.1 Purposes.

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

(b) **Relation to other provisions of the act.** Section 106 is related to other provisions of the act designed to further the national policy of historic preservation. References to those provisions are included in this part to identify circumstances where they may affect actions taken to meet section 106 requirements. Such provisions may have their own implementing regulations or guidelines and are not intended to be implemented by the procedures in this part except insofar as they relate to the section 106 process. Guidelines, policies, and procedures issued by other agencies, including the Secretary, have been cited in this part for ease of access and are not incorporated by reference.

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

Sec. 800.2 Participants in the Section 106 process.

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

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

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

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

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

(b) **Council.** The Council issues regulations to implement section 106, provides guidance and advice on the application of the procedures in this part, and generally oversees the operation of the section 106 process. The Council also consults with and comments to agency officials on individual undertakings and programs that affect historic properties.

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

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

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

(1) State historic preservation officer.

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

(ii) If an Indian tribe has assumed the functions of the SHPO in the section 106 process for undertakings on tribal lands, the SHPO shall participate as a consulting party if the undertaking takes place on tribal lands but affects historic properties off tribal lands, if requested in accordance with Sec. 800.3(c)(1), or if the Indian tribe agrees to include the SHPO pursuant to Sec. 800.3(f)(3).

(2) Indian tribes and Native Hawaiian organizations.

(i) Consultation on tribal lands.

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

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

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

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

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

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

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

(E) An Indian tribe or a Native Hawaiian organization may enter into an agreement with an agency official that specifies how they will carry out responsibilities under this part, including concerns over the confidentiality of information. An agreement may cover all aspects of tribal participation in the section 106 process, provided that no modification may be made in the roles of other parties to the section 106 process without their consent. An agreement may grant the Indian tribe or Native Hawaiian organization additional rights to participate or concur in agency decisions in the section 106 process beyond those specified in subpart B of this part. The agency official shall provide a copy of any such agreement to the Council and the appropriate SHPOs.
(F) An Indian tribe that has not assumed the responsibilities of the SHPO for section 106 on tribal lands under section 101(d)(2) of the act may notify the agency official in writing that it is waiving its rights under Sec. 800.6(c)(1) to execute a memorandum of agreement.

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

(4) Applicants for Federal assistance, permits, licenses, and other approvals. An applicant for Federal assistance or for a Federal permit, license, or other approval is entitled to participate as a consulting party as defined in this part. The agency official may authorize an applicant or group of applicants to initiate consultation with the SHPO/THPO and others, but remains legally responsible for all findings and determinations charged to the agency official. The agency official shall notify the SHPO/THPO when an applicant or group of applicants is so authorized. A Federal agency may authorize all applicants in a specific program pursuant to this section by providing notice to all SHPO/THPOs. Federal agencies that provide authorizations to applicants remain responsible for their government-to-government relationships with Indian tribes.

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

(d) The public.

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

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

(3) Use of agency procedures. The agency official may use the agency's procedures for public involvement under the National Environmental Policy Act or other program requirements in lieu of public involvement requirements in subpart B of this part, if they provide adequate opportunities for public involvement consistent with this subpart.
Subpart B—The Section 106 Process

Sec. 800.3 Initiation of the section 106 process.

(a) Establish undertaking. The agency official shall determine whether the proposed Federal action is an undertaking as defined in Sec. 800.16(y) and, if so, whether it is a type of activity that has the potential to cause effects on historic properties.

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

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

(b) Coordinate with other reviews. The agency official should coordinate the steps of the section 106 process, as appropriate, with the overall planning schedule for the undertaking and with any reviews required under other authorities such as the National Environmental Policy Act, the Native American Graves Protection and Repatriation Act, the American Indian Religious Freedom Act, the Archeological Resources Protection Act, and agency-specific legislation, such as section 4(f) of the Department of Transportation Act. Where consistent with the procedures in this subpart, the agency official may use information developed for other reviews under Federal, State, or tribal law to meet the requirements of section 106.

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

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

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

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

(4) **Failure of the SHPO/THPO to respond.** If the SHPO/THPO fails to respond within 30 days of receipt of a request for review of a finding or determination, the agency official may either proceed to the next step in the process based on the finding or determination or consult with the Council in lieu of the SHPO/THPO. If the SHPO/THPO re-enters the Section 106 process, the agency official shall continue the consultation without being required to reconsider previous findings or determinations.

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

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

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

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

(2) **Involving Indian tribes and Native Hawaiian organizations.** The agency official shall make a reasonable and good faith effort to identify any Indian tribes or Native Hawaiian organizations that might attach religious and cultural significance to historic properties in the area of potential effects and invite them to be consulting parties. Such Indian tribe or Native Hawaiian organization that requests in writing to be a consulting party shall be one.

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

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

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

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

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

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

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

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

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

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

(2) *Phased identification and evaluation.* Where alternatives under consideration consist of corridors or large land areas, or where access to properties is restricted, the agency official may use a phased process to conduct identification and evaluation efforts. The agency official may also defer final identification and evaluation of historic properties if it is specifically provided for in a memorandum of agreement executed pursuant to Sec. 800.6, a programmatic agreement executed pursuant to Sec. 800.14(b), or the documents used by an agency official to comply with the National Environmental Policy Act pursuant to Sec. 800.8. The process should establish the likely presence of historic properties within the area of potential effects for each alternative or inaccessible area through background research, consultation and an appropriate level of field investigation, taking into account the number of alternatives under consideration, the magnitude of the undertaking and its likely effects, and the views of the SHPO/THPO and any other consulting parties. As specific aspects or locations of an alternative are refined or access is gained, the agency official shall proceed with the identification and evaluation of historic properties in accordance with paragraphs (b)(1) and (c) of this section.

(c) *Evaluate historic significance.*

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

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

(d) Results of identification and evaluation.

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

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

Sec. 800.5 Assessment of adverse effects.

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

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

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

(i) Physical destruction of or damage to all or part of the property;

(ii) Alteration of a property, including restoration, rehabilitation, repair,
maintenance, stabilization, hazardous material remediation, and provision of handicapped access, that is not consistent with the Secretary's standards for the treatment of historic properties (36 CFR part 68) and applicable guidelines;

(iii) Removal of the property from its historic location;

(iv) Change of the character of the property's use or of physical features within the property's setting that contribute to its historic significance;

(v) Introduction of visual, atmospheric or audible elements that diminish the integrity of the property's significant historic features;

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

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

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

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

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

(1) Agreement with finding. Unless the Council is reviewing the finding pursuant to Sec. 800.5(c)(3), the agency official may proceed if the SHPO/THPO agrees with the finding. The agency official shall carry out the undertaking in accordance with Sec. 800.5(d)(1). Failure of the SHPO/THPO to respond within 30 days from receipt of the finding shall be considered agreement of the SHPO/THPO with the finding.

(2) Disagreement with finding.

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

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

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

(3) Council review of findings. When a finding is submitted to the Council pursuant to paragraph (c)(2) of this section, the agency official shall include the documentation specified in Sec. 800.11(e). The Council shall review the finding and notify the agency official of its determination as to whether the adverse effect criteria have been correctly applied within 15 days of receiving the documented finding from the agency official. The Council shall specify the basis for its determination. The agency official shall proceed in accordance with the Council's determination. If the Council does not respond within 15 days of receipt of the finding, the agency official may assume concurrence with the agency official's findings and proceed accordingly.

(d) Results of assessment.

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

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

Sec. 800.6 Resolution of adverse effects.

(a) Continue consultation. The agency official shall consult with the SHPO/THPO and other consulting parties, including Indian tribes and Native Hawaiian organizations, to develop and evaluate alternatives or modifications to the undertaking that could avoid, minimize, or mitigate adverse effects on historic properties.
(1) **Notify the Council and determine Council participation.** The agency official shall notify the Council of the adverse effect finding by providing the documentation specified in Sec. 800.11(e).

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

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

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

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

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

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

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

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

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

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

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

(b) Resolve adverse effects.

(1) Resolution without the Council.

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

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

(iii) If the Council decides to join the consultation, the agency official shall follow paragraph (b)(2) of this section.

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

(v) If the agency official, and the SHPO/THPO fail to agree on the terms of a memorandum of agreement, the agency official shall request the Council to join the consultation and provide the Council with the documentation set forth in Sec. 800.11(g). If the Council decides to join the consultation, the agency official shall proceed in accordance with paragraph (b)(2) of this section. If the Council decides not to join the consultation, the Council will notify the agency and proceed to comment in accordance with Sec. 800.7(c).

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

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

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

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

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

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

(2) **Invited signatories.**

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

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

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

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

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

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

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

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

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

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

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

Sec. 800.7 Failure to resolve adverse effects.

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

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

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

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

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

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

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

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

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

(4) **Response to Council comment.** The head of the agency shall take into account the Council's comments in reaching a final decision on the undertaking. Section 110(1) of the act directs that the head of the agency shall document this decision and may not delegate his or her responsibilities pursuant to section 106. Documenting the agency head's decision shall include:

(i) Preparing a summary of the decision that contains the rationale for the decision and evidence of consideration of the Council's comments and providing it to the Council prior to approval of the undertaking;

(ii) Providing a copy of the summary to all consulting parties; and

(iii) Notifying the public and making the record available for public inspection.

**Sec. 800.8 Coordination With the National Environmental Policy Act.**

(a) **General principles.**

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

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

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

(b) Actions categorically excluded under NEPA. If a project, activity or program is categorically excluded from NEPA review under an agency's NEPA procedures, the agency official shall determine if it still qualifies as an undertaking requiring review under section 106 pursuant to Sec. 800.3(a). If so, the agency official shall proceed with section 106 review in accordance with the procedures in this subpart.

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

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

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

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

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

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

(v) Develop in consultation with identified consulting parties alternatives and proposed measures that might avoid, minimize or mitigate any adverse effects of the undertaking on historic properties and describe them in the EA or DEIS.
(2) Review of environmental documents.

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

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

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

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

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

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

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

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

(5) Modification of the undertaking. If the undertaking is modified after approval of the FONSI or the ROD in a manner that changes the undertaking or alters its effects on historic properties, or if the agency official fails to ensure that the measures to avoid, minimize or mitigate adverse effects (as specified in either the FONSI or the ROD, or in the binding commitment adopted pursuant to paragraph (c)(4) of this section) are carried out, the agency official shall notify the Council and all consulting parties that supplemental environmental documents will be prepared in compliance with NEPA or that the procedures in Secs. 800.3
Sec. 800.9 Council review of section 106 compliance.

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

(b) **Agency foreclosure of the Council's opportunity to comment.** Where an agency official has failed to complete the requirements of section 106 in accordance with the procedures in this part prior to the approval of an undertaking, the Council's opportunity to comment may be foreclosed. The Council may review a case to determine whether a foreclosure has occurred. The Council shall notify the agency official and the agency's Federal preservation officer and allow 30 days for the agency official to provide information as to whether foreclosure has occurred. If the Council determines foreclosure has occurred, the Council shall transmit the determination to the agency official and the head of the agency. The Council shall also make the determination available to the public and any parties known to be interested in the undertaking and its effects upon historic properties.

(c) **Intentional adverse effects by applicants.**

(1) **Agency responsibility.** Section 110(k) of the act prohibits a Federal agency from granting a loan, loan guarantee, permit, license or other assistance to an applicant who, with intent to avoid the requirements of section 106, has intentionally significantly adversely affected a historic property to which the grant would relate, or having legal power to prevent it, has allowed such significant adverse effect to occur, unless the agency, after consultation with the Council, determines that circumstances justify granting such assistance despite the adverse effect created or permitted by the applicant. Guidance issued by the Secretary pursuant to section 110 of the act governs its implementation.

(2) **Consultation with the Council.** When an agency official determines, based on the actions of an applicant, that section 110(k) is applicable and that circumstances may justify granting the assistance, the agency official shall notify the Council and provide documentation specifying the circumstances under which the adverse effects to the historic property occurred and the degree of damage to the integrity of the property. This documentation shall include any views obtained from the applicant, SHPO/THPO, an Indian tribe if the undertaking occurs on or affects historic properties on tribal lands, and other parties known to be interested in the undertaking.

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

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

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

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

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

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

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

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

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

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

Sec. 800.11 Documentation standards.

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

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

(c) Confidentiality.

(1) Authority to withhold information. Section 304 of the act provides that the head of a Federal agency or other public official receiving grant assistance pursuant to the act, after consultation with the Secretary, shall withhold from public disclosure information about the location, character, or ownership of a historic property when disclosure may cause a significant invasion of privacy; risk harm to the historic property; or impede the use of a traditional religious site by practitioners. When the head of a Federal agency or other public official has determined that information should be withheld from the public pursuant to these criteria, the Secretary, in consultation with such Federal agency head or official, shall determine who may have access to the information for the purposes of carrying out the act.
(2) **Consultation with the Council.** When the information in question has been developed in the course of an agency's compliance with this part, the Secretary shall consult with the Council in reaching determinations on the withholding and release of information. The Federal agency shall provide the Council with available information, including views of the SHPO/THPO, Indian tribes and Native Hawaiian organizations, related to the confidentiality concern. The Council shall advise the Secretary and the Federal agency within 30 days of receipt of adequate documentation.

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

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

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

2. A description of the steps taken to identify historic properties, including, as appropriate, efforts to seek information pursuant to Sec. 800.4(b); and

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

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

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

2. A description of the steps taken to identify historic properties;

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

4. A description of the undertaking's effects on historic properties;

5. An explanation of why the criteria of adverse effect were found applicable or inapplicable, including any conditions or future actions to avoid, minimize or mitigate adverse effects; and

6. Copies or summaries of any views provided by consulting parties and the public.

(f) **Memorandum of agreement.** When a memorandum of agreement is filed with the Council, the documentation shall include, any substantive revisions or additions to the documentation provided the Council pursuant to Sec. 800.6(a)(1), an evaluation of any measures considered to avoid or minimize the undertaking's
adverse effects and a summary of the views of consulting parties and the public.

(g) Requests for comment without a memorandum of agreement. Documentation shall include:

(1) A description and evaluation of any alternatives or mitigation measures that the agency official proposes to resolve the undertaking's adverse effects;

(2) A description of any reasonable alternatives or mitigation measures that were considered but not chosen, and the reasons for their rejection;

(3) Copies or summaries of any views submitted to the agency official concerning the adverse effects of the undertaking on historic properties and alternatives to reduce or avoid those effects; and

(4) Any substantive revisions or additions to the documentation provided the Council pursuant to Sec. 800.6(a)(1).

Sec. 800.12 Emergency situations.

(a) Agency procedures. The agency official, in consultation with the appropriate SHPOs/THPOs, affected Indian tribes and Native Hawaiian organizations, and the Council, is encouraged to develop procedures for taking historic properties into account during operations which respond to a disaster or emergency declared by the President, a tribal government, or the Governor of a State or which respond to other immediate threats to life or property. If approved by the Council, the procedures shall govern the agency's historic preservation responsibilities during any disaster or emergency in lieu of Secs. 800.3 through 800.6.

(b) Alternatives to agency procedures. In the event an agency official proposes an emergency undertaking as an essential and immediate response to a disaster or emergency declared by the President, a tribal government, or the Governor of a State or another immediate threat to life or property, and the agency has not developed procedures pursuant to paragraph (a) of this section, the agency official may comply with section 106 by:

(1) Following a programmatic agreement developed pursuant to Sec. 800.14(b) that contains specific provisions for dealing with historic properties in emergency situations; or

(2) Notifying the Council, the appropriate SHPO/THPO and any Indian tribe or Native Hawaiian organization that may attach religious and cultural significance to historic properties likely to be affected prior to the undertaking and affording them an opportunity to comment within seven days of notification. If the agency official determines that circumstances do not permit seven days for comment, the agency official shall notify the Council, the SHPO/THPO and the Indian tribe or Native Hawaiian organization and invite any comments within the time available.

(c) Local governments responsible for section 106 compliance. When a local
government official serves as the agency official for section 106 compliance, paragraphs (a) and (b) of this section also apply to an imminent threat to public health or safety as a result of a natural disaster or emergency declared by a local government's chief executive officer or legislative body, provided that if the Council or SHPO/THPO objects to the proposed action within seven days, the agency official shall comply with Secs. 800.3 through 800.6.

(d) Applicability. This section applies only to undertakings that will be implemented within 30 days after the disaster or emergency has been formally declared by the appropriate authority. An agency may request an extension of the period of applicability from the Council prior to the expiration of the 30 days. Immediate rescue and salvage operations conducted to preserve life or property are exempt from the provisions of section 106 and this part.

Sec. 800.13 Post-review discoveries.

(a) Planning for subsequent discoveries.

(1) Using a programmatic agreement. An agency official may develop a programmatic agreement pursuant to Sec. 800.14(b) to govern the actions to be taken when historic properties are discovered during the implementation of an undertaking.

(2) Using agreement documents. When the agency official's identification efforts in accordance with Sec. 800.4 indicate that historic properties are likely to be discovered during implementation of an undertaking and no programmatic agreement has been developed pursuant to paragraph (a)(1) of this section, the agency official shall include in any finding of no adverse effect or memorandum of agreement a process to resolve any adverse effects upon such properties. Actions in conformance with the process satisfy the agency official's responsibilities under section 106 and this part.

(b) Discoveries without prior planning. If historic properties are discovered or unanticipated effects on historic properties found after the agency official has completed the section 106 process without establishing a process under paragraph (a) of this section, the agency official shall make reasonable efforts to avoid, minimize or mitigate adverse effects to such properties and:

(1) If the agency official has not approved the undertaking or if construction on an approved undertaking has not commenced, consult to resolve adverse effects pursuant to Sec. 800.6; or

(2) If the agency official, the SHPO/THPO and any Indian tribe or Native Hawaiian organization that might attach religious and cultural significance to the affected property agree that such property is of value solely for its scientific, prehistoric, historic or archeological data, the agency official may comply with the Archeological and Historic Preservation Act instead of the procedures in this part and provide the Council, the SHPO/THPO, and the Indian tribe or Native Hawaiian organization with a report on the actions within a reasonable time after
they are completed; or

(3) If the agency official has approved the undertaking and construction has commenced, determine actions that the agency official can take to resolve adverse effects, and notify the SHPO/THPO, any Indian tribe or Native Hawaiian organization that might attach religious and cultural significance to the affected property, and the Council within 48 hours of the discovery. The notification shall describe the agency official's assessment of National Register eligibility of the property and proposed actions to resolve the adverse effects. The SHPO/THPO, the Indian tribe or Native Hawaiian organization and the Council shall respond within 48 hours of the notification. The agency official shall take into account their recommendations regarding National Register eligibility and proposed actions, and then carry out appropriate actions. The agency official shall provide the SHPO/THPO, the Indian tribe or Native Hawaiian organization and the Council a report of the actions when they are completed.

(c) Eligibility of properties. The agency official, in consultation with the SHPO/THPO, may assume a newly-discovered property to be eligible for the National Register for purposes of section 106. The agency official shall specify the National Register criteria used to assume the property's eligibility so that information can be used in the resolution of adverse effects.

(d) Discoveries on tribal lands. If historic properties are discovered on tribal lands, or there are unanticipated effects on historic properties found on tribal lands, after the agency official has completed the section 106 process without establishing a process under paragraph (a) of this section and construction has commenced, the agency official shall comply with applicable tribal regulations and procedures and obtain the concurrence of the Indian tribe on the proposed action.

Subpart C—Program Alternatives

Sec. 800.14 Federal agency program alternatives.

(a) Alternate procedures. An agency official may develop procedures to implement section 106 and substitute them for all or part of subpart B of this part if they are consistent with the Council's regulations pursuant to section 110(a)(2)(E) of the act.

(1) Development of procedures. The agency official shall consult with the Council, the National Conference of State Historic Preservation Officers, or individual SHPO/THPOs, as appropriate, and Indian tribes and Native Hawaiian organizations, as specified in paragraph (f) of this section, in the development of alternate procedures, publish notice of the availability of proposed alternate procedures in the Federal Register and take other appropriate steps to seek public input during the development of alternate procedures.

(2) Council review. The agency official shall submit the proposed alternate procedures to the Council for a 60-day review period. If the Council finds the
procedures to be consistent with this part, it shall notify the agency official and the agency official may adopt them as final alternate procedures.

(3) Notice. The agency official shall notify the parties with which it has consulted and publish notice of final alternate procedures in the Federal Register.

(4) Legal effect. Alternate procedures adopted pursuant to this subpart substitute for the Council's regulations for the purposes of the agency's compliance with section 106, except that where an Indian tribe has entered into an agreement with the Council to substitute tribal historic preservation regulations for the Council's regulations under section 101(d)(5) of the act, the agency shall follow those regulations in lieu of the agency's procedures regarding undertakings on tribal lands. Prior to the Council entering into such agreements, the Council will provide Federal agencies notice and opportunity to comment on the proposed substitute tribal regulations.

(b) Programmatic agreements. The Council and the agency official may negotiate a programmatic agreement to govern the implementation of a particular program or the resolution of adverse effects from certain complex project situations or multiple undertakings.

(1) Use of programmatic agreements. A programmatic agreement may be used:

(i) When effects on historic properties are similar and repetitive or are multi-State or regional in scope;

(ii) When effects on historic properties cannot be fully determined prior to approval of an undertaking;

(iii) When nonfederal parties are delegated major decisionmaking responsibilities;

(iv) Where routine management activities are undertaken at Federal installations, facilities, or other land-management units; or

(v) Where other circumstances warrant a departure from the normal section 106 process.

(2) Developing programmatic agreements for agency programs.

(i) The consultation shall involve, as appropriate, SHPO/THPOs, the National Conference of State Historic Preservation Officers (NCSHPO), Indian tribes and Native Hawaiian organizations, other Federal agencies, and members of the public. If the programmatic agreement has the potential to affect historic properties on tribal lands or historic properties of religious and cultural significance to an Indian tribe or Native Hawaiian organization, the agency official shall also follow paragraph (f) of this section.

(ii) Public participation. The agency official shall arrange for public participation appropriate to the subject matter and the scope of the program and in
according to subpart A of this part. The agency official shall consider the
nature of the program and its likely effects on historic properties and take steps to
involve the individuals, organizations and entities likely to be interested.

(iii) **Effect.** The programmatic agreement shall take effect when executed by the
Council, the agency official and the appropriate SHPOs/THPOs when the
programmatic agreement concerns a specific region or the president of NCSHPO
when NCSHPO has participated in the consultation. A programmatic agreement
shall take effect on tribal lands only when the THPO, Indian tribe, or a designated
representative of the tribe is a signatory to the agreement. Compliance with the
procedures established by an approved programmatic agreement satisfies the
agency's section 106 responsibilities for all individual undertakings of the
program covered by the agreement until it expires or is terminated by the agency,
the president of NCSHPO when a signatory, or the Council. Termination by an
individual SHPO/THPO shall only terminate the application of a regional
programmatic agreement within the jurisdiction of the SHPO/THPO. If a THPO
assumes the responsibilities of a SHPO pursuant to section 101(d)(2) of the act
and the SHPO is signatory to programmatic agreement, the THPO assumes the
role of a signatory, including the right to terminate a regional programmatic
agreement on lands under the jurisdiction of the tribe.

(iv) **Notice.** The agency official shall notify the parties with which it has
consulted that a programmatic agreement has been executed under paragraph (b)
of this section, provide appropriate public notice before it takes effect, and make
any internal agency procedures implementing the agreement readily available to
the Council, SHPO/THPOs, and the public.

(v) If the Council determines that the terms of a programmatic agreement are
not being carried out, or if such an agreement is terminated, the agency official
shall comply with subpart B of this part with regard to individual undertakings of
the program covered by the agreement.

(3) Developing programmatic agreements for complex or multiple
undertakings. Consultation to develop a programmatic agreement for dealing with
the potential adverse effects of complex projects or multiple undertakings shall
follow Sec. 800.6. If consultation pertains to an activity involving multiple
undertakings and the parties fail to reach agreement, then the agency official shall
comply with the provisions of subpart B of this part for each individual
undertaking.

(4) Prototype programmatic agreements. The Council may designate an
agreement document as a prototype programmatic agreement that may be used for
the same type of program or undertaking in more than one case or area. When an
agency official uses such a prototype programmatic agreement, the agency official
may develop and execute the agreement with the appropriate SHPO/THPO and
the agreement shall become final without need for Council participation in
consultation or Council signature.

(c) **Exempted categories.**
(1) **Criteria for establishing.** An agency official may propose a program or category of agency undertakings that may be exempted from review under the provisions of subpart B of this part, if the program or category meets the following criteria:

(i) The actions within the program or category would otherwise qualify as "undertakings" as defined in Sec. 800.16;

(ii) The potential effects of the undertakings within the program or category upon historic properties are foreseeable and likely to be minimal or not adverse; and

(iii) Exemption of the program or category is consistent with the purposes of the act.

(2) **Public participation.** The agency official shall arrange for public participation appropriate to the subject matter and the scope of the exemption and in accordance with the standards in subpart A of this part. The agency official shall consider the nature of the exemption and its likely effects on historic properties and take steps to involve individuals, organizations and entities likely to be interested.

(3) **Consultation with SHPOs/THPOs.** The agency official shall notify and consider the views of the SHPOs/THPOs on the exemption.

(4) Consultation with Indian tribes and Native Hawaiian organizations. If the exempted program or category of undertakings has the potential to affect historic properties on tribal lands or historic properties of religious and cultural significance to an Indian tribe or Native Hawaiian organization, the Council shall follow the requirements for the agency official set forth in paragraph (f) of this section.

(5) **Council review of proposed exemptions.** The Council shall review a request for an exemption that is supported by documentation describing the program or category for which the exemption is sought, demonstrating that the criteria of paragraph (c)(1) of this section have been met, describing the methods used to seek the views of the public, and summarizing any views submitted by the SHPO/THPOs, the public, and any others consulted. Unless it requests further information, the Council shall approve or reject the proposed exemption within 30 days of receipt, and thereafter notify the agency official and SHPO/THPOs of the decision. The decision shall be based on the consistency of the exemption with the purposes of the act, taking into consideration the magnitude of the exempted undertaking or program and the likelihood of impairment of historic properties in accordance with section 214 of the act.

(6) **Legal consequences.** Any undertaking that falls within an approved exempted program or category shall require no further review pursuant to subpart B of this part, unless the agency official or the Council determines that there are circumstances under which the normally excluded undertaking should be reviewed under subpart B of this part.
(7) **Termination.** The Council may terminate an exemption at the request of the agency official or when the Council determines that the exemption no longer meets the criteria of paragraph (c)(1) of this section. The Council shall notify the agency official 30 days before termination becomes effective.

(8) **Notice.** The agency official shall publish notice of any approved exemption in the *Federal Register*.

(d) **Standard treatments.**

(1) **Establishment.** The Council, on its own initiative or at the request of another party, may establish standard methods for the treatment of a category of historic properties, a category of undertakings, or a category of effects on historic properties to assist Federal agencies in satisfying the requirements of subpart B of this part. The Council shall publish notice of standard treatments in the *Federal Register*.

(2) **Public participation.** The Council shall arrange for public participation appropriate to the subject matter and the scope of the standard treatment and consistent with subpart A of this part. The Council shall consider the nature of the standard treatment and its likely effects on historic properties and the individuals, organizations and entities likely to be interested. Where an agency official has proposed a standard treatment, the Council may request the agency official to arrange for public involvement.

(3) **Consultation with SHPOs/THPOs.** The Council shall notify and consider the views of SHPOs/THPOs on the proposed standard treatment.

(4) **Consultation with Indian tribes and Native Hawaiian organizations.** If the proposed standard treatment has the potential to affect historic properties on tribal lands or historic properties of religious and cultural significance to an Indian tribe or Native Hawaiian organization, the Council shall follow the requirements for the agency official set forth in paragraph (f) of this section.

(5) **Termination.** The Council may terminate a standard treatment by publication of a notice in the *Federal Register* 30 days before the termination takes effect.

(e) **Program comments.** An agency official may request the Council to comment on a category of undertakings in lieu of conducting individual reviews under Secs. 800.4 through 800.6. The Council may provide program comments at its own initiative.

(1) **Agency request.** The agency official shall identify the category of undertakings, specify the likely effects on historic properties, specify the steps the agency official will take to ensure that the effects are taken into account, identify the time period for which the comment is requested and summarize any views submitted by the public.

(2) **Public participation.** The agency official shall arrange for public
participation appropriate to the subject matter and the scope of the category and in accordance with the standards in subpart A of this part. The agency official shall consider the nature of the undertakings and their likely effects on historic properties and the individuals, organizations and entities likely to be interested.

(3) **Consultation with SHPOs/THPOs.** The Council shall notify and consider the views of SHPOs/THPOs on the proposed program comment.

(4) **Consultation with Indian tribes and Native Hawaiian organizations.** If the program comment has the potential to affect historic properties on tribal lands or historic properties of religious and cultural significance to an Indian tribe or Native Hawaiian organization, the Council shall follow the requirements for the agency official set forth in paragraph (f) of this section.

(5) **Council action.** Unless the Council requests additional documentation, notifies the agency official that it will decline to comment, or obtains the consent of the agency official to extend the period for providing comment, the Council shall comment to the agency official within 45 days of the request.

(i) If the Council comments, the agency official shall take into account the comments of the Council in carrying out the undertakings within the category and publish notice in the *Federal Register* of the Council’s comments and steps the agency will take to ensure that effects to historic properties are taken into account.

(ii) If the Council declines to comment, the agency official shall continue to comply with the requirements of Secs. 800.3 through 800.6 for the individual undertakings.

(6) **Withdrawal of comment.** If the Council determines that the consideration of historic properties is not being carried out in a manner consistent with the program comment, the Council may withdraw the comment and the agency official shall comply with the requirements of Secs. 800.3 through 800.6 for the individual undertakings.

(f) **Consultation with Indian tribes and Native Hawaiian organizations when developing program alternatives.** Whenever an agency official proposes a program alternative pursuant to paragraphs (a) through (e) of this section, the agency official shall ensure that development of the program alternative includes appropriate government-to-government consultation with affected Indian tribes and consultation with affected Native Hawaiian organizations.

(1) **Identifying affected Indian tribes and Native Hawaiian organizations.** If any undertaking covered by a proposed program alternative has the potential to affect historic properties on tribal lands, the agency official shall identify and consult with the Indian tribes having jurisdiction over such lands. If a proposed program alternative has the potential to affect historic properties of religious and cultural significance to an Indian tribe or a Native Hawaiian organization which are located off tribal lands, the agency official shall identify those Indian tribes and Native Hawaiian organizations that might attach religious and cultural significance to such properties and consult with them. When a proposed program
alternative has nationwide applicability, the agency official shall identify an appropriate government to government consultation with Indian tribes and consult with Native Hawaiian organizations in accordance with existing Executive orders, Presidential memoranda, and applicable provisions of law.

(2) Results of consultation. The agency official shall provide summaries of the views, along with copies of any written comments, provided by affected Indian tribes and Native Hawaiian organizations to the Council as part of the documentation for the proposed program alternative. The agency official and the Council shall take those views into account in reaching a final decision on the proposed program alternative.

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

Sec. 800.16 Definitions.


(b) Agency means agency as defined in 5 U.S.C. 551.

(c) Approval of the expenditure of funds means any final agency decision authorizing or permitting the expenditure of Federal funds or financial assistance on an undertaking, including any agency decision that may be subject to an administrative appeal.

(d) Area of potential effects means the geographic area or areas within which an undertaking may directly or indirectly cause alterations in the character or use of historic properties, if any such properties exist. The area of potential effects is influenced by the scale and nature of an undertaking and may be different for different kinds of effects caused by the undertaking.

(e) Comment means the findings and recommendations of the Council formally provided in writing to the head of a Federal agency under section 106.

(f) Consultation means the process of seeking, discussing, and considering the views of other participants, and, where feasible, seeking agreement with them regarding matters arising in the section 106 process. The Secretary's “Standards and Guidelines for Federal Agency Preservation Programs pursuant to the National Historic Preservation Act” provide further guidance on consultation.

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

(h) Day or days means calendar days.

(i) Effect means alteration to the characteristics of a historic property qualifying it for inclusion in or eligibility for the National Register.
(j) **Foreclosure** means an action taken by an agency official that effectively precludes the Council from providing comments which the agency official can meaningfully consider prior to the approval of the undertaking.

(k) **Head of the agency** means the chief official of the Federal agency responsible for all aspects of the agency's actions. If a State, local, or tribal government has assumed or has been delegated responsibility for section 106 compliance, the head of that unit of government shall be considered the head of the agency.

(l)(1) **Historic property** means any prehistoric or historic district, site, building, structure, or object included in, or eligible for inclusion in, the National Register of Historic Places maintained by the Secretary of the Interior. This term includes artifacts, records, and remains that are related to and located within such properties. The term includes properties of traditional religious and cultural importance to an Indian tribe or Native Hawaiian organization and that meet the National Register criteria.

(2) The term eligible for inclusion in the National Register includes both properties formally determined as such in accordance with regulations of the Secretary of the Interior and all other properties that meet the National Register criteria.

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

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

(o) **Memorandum of agreement** means the document that records the terms and conditions agreed upon to resolve the adverse effects of an undertaking upon historic properties.

(p) **National Historic Landmark** means a historic property that the Secretary of the Interior has designated a National Historic Landmark.

(q) **National Register** means the National Register of Historic Places maintained by the Secretary of the Interior.

(r) **National Register criteria** means the criteria established by the Secretary of the Interior for use in evaluating the eligibility of properties for the National Register (36 CFR part 60).

(s)(1) **Native Hawaiian organization** means any organization which serves and represents the interests of Native Hawaiians; has as a primary and stated purpose the provision of services to Native Hawaiians; and has demonstrated expertise in
aspects of historic preservation that are significant to Native Hawaiians.

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

(t) Programmatic agreement means a document that records the terms and conditions agreed upon to resolve the potential adverse effects of a Federal agency program, complex undertaking or other situations in accordance with Sec. 800.14 (b).

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

(v) State Historic Preservation Officer (SHPO) means the official appointed or designated pursuant to section 101(b)(1) of the act to administer the State historic preservation program or a representative designated to act for the State historic preservation officer.

(w) Tribal Historic Preservation Officer (THPO) means the tribal official appointed by the tribe's chief governing authority or designated by a tribal ordinance or preservation program who has assumed the responsibilities of the SHPO for purposes of section 106 compliance on tribal lands in accordance with section 101(d)(2) of the act.

(x) Tribal lands means all lands within the exterior boundaries of any Indian reservation and all dependent Indian communities.

(y) Undertaking means a project, activity, or program funded in whole or in part under the direct or indirect jurisdiction of a Federal agency, including those carried out by or on behalf of a Federal agency; those carried out with Federal financial assistance; those requiring a Federal permit, license or approval; and those subject to State or local regulation administered pursuant to a delegation or approval by a Federal agency.

Appendix A to Part 800—Criteria for Council Involvement in Reviewing Individual Section 106 Cases

(a) Introduction. This appendix sets forth the criteria that will be used by the Council to determine whether to enter an individual section 106 review that it normally would not be involved in.

(b) General policy. The Council may choose to exercise its authorities under the section 106 regulations to participate in an individual project pursuant to the following criteria. However, the Council will not always elect to participate even though one or more of the criteria may be met.

(c) Specific criteria. The Council is likely to enter the section 106 process at the steps specified in the regulations in this part when an undertaking:
(1) **Has substantial impacts on important historic properties.** This may include adverse effects on properties that possess a national level of significance or on properties that are of unusual or noteworthy importance or are a rare property type; or adverse effects to large numbers of historic properties, such as impacts to multiple properties within a historic district.

(2) **Presents important questions of policy or interpretation.** This may include questions about how the Council's regulations are being applied or interpreted, including possible foreclosure or anticipatory demolition situations; situations where the outcome will set a precedent affecting Council policies or program goals; or the development of programmatic agreements that alter the way the section 106 process is applied to a group or type of undertakings.

(3) **Has the potential for presenting procedural problems.** This may include cases with substantial public controversy that is related to historic preservation issues; with disputes among or about consulting parties which the Council's involvement could help resolve; that are involved or likely to be involved in litigation on the basis of section 106; or carried out by a Federal agency, in a State or locality, or on tribal lands where the Council has previously identified problems with section 106 compliance pursuant to Sec. 800.9(d)(2).

(4) **Presents issues of concern to Indian tribes or Native Hawaiian organizations.** This may include cases where there have been concerns raised about the identification of, evaluation of or assessment of effects on historic properties to which an Indian tribe or Native Hawaiian organization attaches religious and cultural significance; where an Indian tribe or Native Hawaiian organization has requested Council involvement to assist in the resolution of adverse effects; or where there are questions relating to policy, interpretation or precedent under section 106 or its relation to other authorities, such as the Native American Graves Protection and Repatriation Act.

John M. Fowler,
*Executive Director.*
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The Secretary of the Interior's Standards for the Treatment of Historic Properties, 1995

introduction
Four Treatment Approaches
Choosing an Appropriate Treatment

Standards for Preservation
Standards for Rehabilitation
Standards for Restoration
Standards for Reconstruction

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ROOTED IN OVER 120 YEARS OF PRESERVATION ETHICS in both Europe and America, The Secretary of the Interior's Standards for the Treatment of Historic Properties are common sense principles in non-technical language. They were developed to help protect our nation's irreplaceable cultural resources by promoting consistent preservation practices.

The Standards may be applied to all properties listed in the National Register of Historic Places: buildings, sites, structures, objects, and districts.

It should be understood that the Standards are a series of concepts about maintaining, repairing and replacing historic materials, as well as designing new additions or making alterations; as such, they cannot, in and of themselves, be used to make essential decisions about which features of a historic property should be saved and which might be changed. But once an appropriate treatment is selected, the Standards provide philosophical consistency to the work.

Go to the new—generously illustrated and all navigable Guidelines
The Secretary of the Interior's Standards for the Treatment of Historic Properties, 1995

Four Treatment Approaches

There are Standards for four distinct, but interrelated, approaches to the treatment of historic properties—preservation, rehabilitation, restoration, and reconstruction.

**Preservation** focuses on the maintenance and repair of existing historic materials and retention of a property's form as it has evolved over time. (Protection and Stabilization have now been consolidated under this treatment.)

**Rehabilitation** acknowledges the need to alter or add to a historic property to meet continuing or changing uses while retaining the property's historic character.

**Restoration** depicts a property at a particular period of time in its history, while removing evidence of other periods.

**Reconstruction** re-creates vanished or non-surviving portions of a property for interpretive purposes.
Standards for Preservation

PREVENTION IS DEFINED as the act or process of applying measures necessary to sustain the existing form, integrity, and materials of an historic property. Work, including preliminary measures to protect and stabilize the property, generally focuses upon the ongoing maintenance and repair of historic materials and features rather than extensive replacement and new construction. New exterior additions are not within the scope of this treatment; however, the limited and sensitive upgrading of mechanical, electrical, and plumbing systems and other code-required work to make properties functional is appropriate within a preservation project.

1. A property will be used as it was historically, or be given a new use that maximizes the retention of distinctive materials, features, spaces, and spatial relationships. Where a treatment and use have not been identified, a property will be protected and, if necessary, stabilized until additional work may be undertaken.

2. The historic character of a property will be retained and preserved. The replacement of intact or repairable historic materials or alteration of features, spaces, and spatial relationships that characterize a property will be avoided.

3. Each property will be recognized as a physical record of its time, place, and use. Work needed to stabilize, consolidate, and conserve existing historic materials and features will be physically and visually compatible, identifiable upon close inspection, and properly documented for future research.

4. Changes to a property that have acquired historic significance in their own right will be retained and preserved.

5. Distinctive materials, features, finishes, and construction techniques or examples of craftsmanship that characterize a property will be preserved.

6. The existing condition of historic features will be evaluated to determine the appropriate level of intervention needed. Where the severity of deterioration requires repair or limited replacement of a distinctive feature, the new material will match the old in composition, design, color, and texture.

7. Chemical or physical treatments, if appropriate, will be undertaken using the gentlest means possible. Treatments that cause damage to historic materials will not be used.

8. Archeological resources will be protected and preserved in place. If such resources must be disturbed, mitigation measures will be
PRESERVATION AS A TREATMENT. When the property's distinctive materials, features, and spaces are essentially intact and thus convey the historic significance without extensive repair or replacement; when depiction at a particular period of time is not appropriate; and when a continuing or new use does not require additions or extensive alterations, Preservation may be considered as a treatment.
Standards for Rehabilitation

REHABILITATION IS DEFINED AS 
the act or process of making possible 
a compatible use for a property 
through repair, alterations, and 
additions while preserving those 
portions or features which convey its 
historical, cultural, or architectural 
values.

1. A property will be used as it was historically or be given a new 
use that requires minimal change to its distinctive materials, 
features, spaces, and spatial relationships.

2. The historic character of a property will be retained and 
preserved. The removal of distinctive materials or alteration of 
features, spaces, and spatial relationships that characterize a 
property will be avoided.

3. Each property will be recognized as a physical record of its time, 
place, and use. Changes that create a false sense of historical 
development, such as adding conjectural features or elements 
from other historic properties, will not be undertaken.

4. Changes to a property that have acquired historic significance in 
their own right will be retained and preserved.

5. Distinctive materials, features, finishes, and construction 
techniques or examples of craftsmanship that characterize a 
property will be preserved.

6. Deteriorated historic features will be repaired rather than 
replaced. Where the severity of deterioration requires 
replacement of a distinctive feature, the new feature will match 
the old in design, color, texture, and, where possible, materials. 
Replacement of missing features will be substantiated by 
documentary and physical evidence.

7. Chemical or physical treatments, if appropriate, will be 
undertaken using the gentlest means possible. Treatments that 
cause damage to historic materials will not be used.

8. Archeological resources will be protected and preserved in place. 
If such resources must be disturbed, mitigation measures will be 
undertaken.

9. New additions, exterior alterations, or related new construction 
will not destroy historic materials, features, and spatial 
relationships that characterize the property. The new work will 
be differentiated from the old and will be compatible with the 
historic materials, features, size, scale and proportion, and 
massing to protect the integrity of the property and its
environment.

10. New additions and adjacent or related new construction will be undertaken in such a manner that, if removed in the future, the essential form and integrity of the historic property and its environment would be unimpaired.

**REHABILITATION AS A TREATMENT.** When repair and replacement of deteriorated features are necessary; when alterations or additions to the property are planned for a new or continued use; and when its depiction at a particular period of time is not appropriate, Rehabilitation may be considered as a treatment.

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Standards for Restoration

RESTORATION IS DEFINED AS the act or process of accurately depicting the form, features, and character of a property as it appeared at a particular period of time by means of the removal of features from other periods in its history and reconstruction of missing features from the restoration period. The limited and sensitive upgrading of mechanical, electrical, and plumbing systems and other code-required work to make properties functional is appropriate within a restoration project.

1. A property will be used as it was historically or be given a new use which reflects the property's restoration period.
2. Materials and features from the restoration period will be retained and preserved. The removal of materials or alteration of features, spaces, and spatial relationships that characterize the period will not be undertaken.
3. Each property will be recognized as a physical record of its time, place, and use. Work needed to stabilize, consolidate and conserve materials and features from the restoration period will be physically and visually compatible, identifiable upon close inspection, and properly documented for future research.
4. Materials, features, spaces, and finishes that characterize other historical periods will be documented prior to their alteration or removal.
5. Distinctive materials, features, finishes, and construction techniques or examples of craftsmanship that characterize the restoration period will be preserved.
6. Deteriorated features from the restoration period will be repaired rather than replaced. Where the severity of deterioration requires replacement of a distinctive feature, the new feature will match the old in design, color, texture, and, where possible, materials.
7. Replacement of missing features from the restoration period will be substantiated by documentary and physical evidence. A false sense of history will not be created by adding conjectural features, features from other properties, or by combining features that never existed together historically.
8. chemical or physical treatments, if appropriate, will be
undertaken using the gentlest means possible. Treatments that cause damage to historic materials will not be used.

9. Archeological resources affected by a project will be protected and preserved in place. If such resources must be disturbed, mitigation measures will be undertaken.

10. Designs that were never executed historically will not be constructed.

RESTORATION AS A TREATMENT. When the property's design, architectural, or historical significance during a particular period of time outweighs the potential loss of extant materials, features, spaces, and finishes that characterize other historical periods; when there is substantial physical and documentary evidence for the work; and when contemporary alterations and additions are not planned, Restoration may be considered as a treatment. Prior to undertaking work, a particular period of time, i.e., the restoration period, should be selected and justified, and a documentation plan for Restoration developed.
Standards for Reconstruction

**RECONSTRUCTION IS DEFINED AS**
the act or process of depicting, by
means of new construction, the form,
features, and detailing of a non-
surviving site, landscape, building,
structure, or object for the purpose of
replicating its appearance at a specific
period of time and in its historic
location.

1. Reconstruction will be used to depict vanished or non-surviving
   portions of a property when documentary and physical evidence
   is available to permit accurate reconstruction with minimal
   conjecture, and such reconstruction is essential to the public
   understanding of the property.

2. Reconstruction of a landscape, building, structure, or object in its
   historic location will be preceded by a thorough archeological
   investigation to identify and evaluate those features and artifacts
   which are essential to an accurate reconstruction. If such
   resources must be disturbed, mitigation measures will be
   undertaken.

3. Reconstruction will include measures to preserve any remaining
   historic materials, features, and spatial relationships.

4. Reconstruction will be based on the accurate duplication of
   historic features and elements substantiated by documentary or
   physical evidence rather than on conjectural designs or the
   availability of different features from other historic properties. A
   reconstructed property will re-create the appearance of the non-
   surviving historic property in materials, design, color, and
   texture.

5. A reconstruction will be clearly identified as a contemporary re-
   creation.

6. Designs that were never executed historically will not be
   constructed.

**RECONSTRUCTION AS A TREATMENT.** When a contemporary
depiction is required to understand and interpret a property's historic
value (including the re-creation of missing components in a historic
district or site); when no other property with the same associative
value has survived; and when sufficient historical documentation exists
to ensure an accurate reproduction, Reconstruction may be considered
as a treatment.
Introduction

Four Treatment Approaches
Choosing an Appropriate Treatment

Standards for Preservation
Standards for Rehabilitation
Standards for Restoration
Standards for Reconstruction

When the Standards are Regulatory
Ordering Accompanying Guidelines
In the September 29, 1983, issue of the Federal Register, the National Park Service published the following Professional Qualification Standards as part of the larger Secretary of the Interior's Standards and Guidelines for Archeology and Historic Preservation. These Professional Qualification Standards are in effect currently. Since 1983, the National Park Service has not issued any revisions for effect, although the National Park Service is in the process of drafting such revisions.

The following requirements are those used by the National Park Service, and have been previously published in the Code of Federal Regulations, 36 CFR Part 61. The qualifications define minimum education and experience required to perform identification, evaluation, registration, and treatment activities. In some cases, additional areas or levels of expertise may be needed, depending on the complexity of the task and the nature of the historic properties involved. In the following definitions, a year of full-time professional experience need not consist of a continuous year of full-time work but may be made up of discontinuous periods of full-time or part-time work adding up to the equivalent of a year of full-time experience.

**History**

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

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

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

**Archeology**

The minimum professional qualifications in archeology are a graduate degree in archeology, anthropology, or closely related field plus:

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

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

3. Demonstrated ability to carry research to completion.

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

A professional in historic archeology shall have at least one year of full-time professional experience at a supervisory level in the study of archeological resources of the historic period.

Architectural History

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

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

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

Architecture

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

Historic Architecture

The minimum professional qualifications in historic architecture are a professional degree in architecture or a State license to practice architecture, plus one of the following:

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

2. At least one year of full-time professional experience on historic preservation projects.
Such graduate study or experience shall include detailed investigations of historic structures, preparation of historic structures research reports, and preparation of plans and specifications for preservation projects.
ARCHEOLOGY AND HISTORIC PRESERVATION:
Secretary of the Interior's Standards and Guidelines
[As Amended and Annotated]


Summary: This notice sets forth the Secretary of the Interior's Standards and Guidelines for Archeology and Historic Preservation. These standards and guidelines are not regulatory and do not set or interpret agency policy. They are intended to provide technical advice about archeological and historic preservation activities and methods.

Dates: These Standards and Guidelines are effective on September 29, 1983.*

*The National Park Service has not republished "The Secretary of the Interior's Standards and Guidelines for Archeology and Historic Preservation" since 1983 (48 FR 44716). NPS has updated portions of the Standards and Guidelines. Where NPS has officially revised portions and published the revisions in the Federal Register, such as the Historic Preservation Project standards and the treatment definitions, we strike through the 1983 language and provide a link to the new material. Where the 1983 language is not current but NPS has not officially replaced it, such as the technical information, we strike through the out-of-date materials. We then provide current technical information and links to NPS and partner websites where this information is available.

Language within brackets has not been published for effect in the Federal Register as a part of the Secretary of the Interior's Standards and Guidelines for Archeology and Historic Preservation.

For Further Information Contact: Lawrence E. Aten, Chief, Intergency Resources Division, National Park Service, United States Department of the Interior, Washington, DC 20240 (202-243-9600). A Directory of Technical Information listing other sources of supporting information is available from the National Park Service.

NPS Cultural Resources Email Contacts

Supplementary Information: The Standards and Guidelines are prepared under the authority of sections 101(f) (g), and (h), and section 110 of the National Historic Preservation Act of 1966, as amended. State Historic Preservation Officers. Federal Preservation Officers including those of the Department of Agriculture,
Department of Defense, Smithsonian Institution and General Services Administration; the Advisory Council on Historic Preservation; the National Trust for Historic Preservation; and other interested parties were consulted during the development of the Standards and Guidelines; additional consultation with these agencies will occur as the Standards and Guidelines are tested during their first year of use.

**Purpose**
The proposed Standards and the philosophy on which they are based result from nearly twenty years of intensive preservation activities at the Federal, State, and local levels.

The purposes of the Standards are:

- To organize the information gathered about preservation activities.
- To describe results to be achieved by Federal agencies, States, and others when planning for the identification, evaluation, registration and treatment of historic properties.
- To integrate the diverse efforts of many entities performing historic preservation into a systematic effort to preserve our nation's culture heritage.

**Uses of the Standards**
The following groups or individuals are encouraged to use these Standards:

- Federal agency personnel responsible for cultural resource management pursuant to section 110 of the National Historic Preservation Act, as amended, in areas under Federal jurisdiction. A separate series of guidelines advising Federal agencies on their specific historic preservation activities under section 110 is in preparation.

- State Historic Preservation Offices responsible under the National Historic Preservation Act, as amended, by making decisions about the preservation of historic properties in their States in accordance with appropriate regulations and the Historic Preservation Fund Grants Management Manual. The State Historic Preservation Offices serve as the focal point for preservation planning and act as a central state-wide repository of collected information.

- Local governments wishing to establish a comprehensive approach to the identification, evaluation, registration and treatment of historic properties within their jurisdictions.

- Other individuals and organizations needing basic technical standards and guidelines for historic preservation activities.

**Organization**
This material is organized in three sections: Standards; Guidelines; and recommended technical sources, cited at the end of each set of
Sec. 5913. - Management development and training

Within 2 years after November 13, 1998, the Secretary shall develop a clear plan for management training and development, whereby career, professional National Park Service employees from any appropriate academic field may obtain sufficient training, experience, and advancement opportunity to enable those qualified to move into park management positions, including explicitly the position of superintendent of a unit of the National Park System.
guidelines. Users of this document are expected to consult the recommended technical sources to obtain guidance in specific cases.

**Review of the Standards and Guidelines**
The Secretary of the Interior's Standards for Rehabilitation have recently undergone extensive review and their guidelines made current after 5 years of field use. Users and other interested parties are encouraged to submit written comments on the utility of these Standards and Guidelines except for the Rehabilitation Standards mentioned above. This edition will be thoroughly reviewed by the National Park Service (including consultation with Federal and State agencies), after the end of its first full year of use and any necessary modifications will be made. Subsequent reviews are anticipated as needed. [Comments should be sent to Chief, Interagency Resources Division, National Park Service, United States Department of the Interior, Washington, DC 20240.]
Preservation planning is a process that organizes preservation activities (identification, evaluation, registration and treatment of historic properties) in a logical sequence. The Standards for Planning discuss the relationship among these activities while the remaining activity standards consider how each activity should be carried out. The Professional Qualifications Standards discuss the education and experience required to carry out various activities.

The Standards for Planning outline a process that determines when an area should be examined for historic properties, whether an identified property is significant, and how a significant property should be treated.

Preservation planning is based on the following principles:

- Important historic properties cannot be replaced if they are destroyed. Preservation planning provides for conservative use of these properties, preserving them in place and avoiding harm when possible and altering or destroying properties only when necessary.

- If planning for the preservation of historic properties is to have positive effects, it must begin before the identification of all significant properties has been completed. To make responsible decisions about historic properties, existing information must be used to the maximum extent and new information must be acquired as needed.

- Preservation planning includes public participation. The planning process should provide a forum for open discussion of preservation issues. Public involvement is most meaningful when it is used to assist in defining values of properties and preservation planning issues, rather than when it is limited to review of decisions already made. Early and continuing public participation is essential to the broad acceptance of preservation planning decisions.

Preservation planning can occur at several levels or scales: in a project area; in a community; in a State as a whole; or in the scattered or contiguous landholdings of a Federal agency. Depending on the scale, the planning process will involve different segments of the public and professional communities and the resulting plans will vary in detail. For example, a State preservation plan will likely have more general recommendations than a plan for a project area or a community. The planning process described in
these Standards is flexible enough to be used at all levels while providing a common structure which promotes coordination and minimizes duplication of effort. The Guidelines for Preservation Planning contain additional information about how to integrate various levels of planning.

**Standard I. Preservation Planning Establishes Historic Contexts**

Decisions about the identification, evaluation, registration and treatment of historic properties are most reliably made when the relationship of individual properties to other similar properties is understood. Information about historic properties representing aspects of history, architecture, archeology, engineering and culture must be collected and organized to define these relationships. This organizational framework is called a "historic context." The historic context organizes information based on a cultural theme and its geographical and chronological limits. Contexts describe the significant broad patterns of development in an area that may be represented by historic properties. The development of historic contexts is the foundation for decisions about identification, evaluation, registration and treatment of historic properties.

**Standard II. Preservation Planning Uses Historic Contexts To Develop Goals and Priorities for the Identification, Evaluation, Registration and Treatment of Historic Properties**

A series of preservation goals is systematically developed for each historic context to ensure that the range of properties representing the important aspects of each historic context is identified, evaluated and treated. Then priorities are set for all goals identified for each historic context. The goals with assigned priorities established for each historic context are integrated to produce a comprehensive and consistent set of goals and priorities for all historic contexts in the geographical area of a planning effort.

The goals for each historic context may change as new information becomes available. The overall set of goals and priorities are then altered in response to the changes in the goals and priorities for the individual historic contexts.

Activities undertaken to meet the goals must be designed to deliver a usable product within a reasonable period of time. The scope of the activity must be defined so the work can be completed with available budgeted program resources.

**Standard III. The Results of Preservation Planning Are Made Available for Integration Into Broader Planning Processes**

Preservation of historic properties is one element of larger planning processes. Planning results, including goals and priorities, information about historic properties, and any planning documents, must be transmitted in a usable form to those responsible for other planning activities. Federally mandated historic preservation planning is most successfully integrated into project management
planning at an early stage. Elsewhere, this integration is achieved by making the results of preservation planning available to other governmental planning bodies and to private interests whose activities affect historic properties.

Secretary of the Interior's Guidelines for Preservation Planning

Introduction

These Guidelines link the Standards for Preservation Planning with more specific guidance and technical information. They describe one approach to meeting the Standards for Preservation Planning. Agencies, organizations or individuals proposing to approach planning differently may wish to review their approaches with the National Park Service.

The Guidelines are organized as follows:
Managing the Planning Process
Developing Historic Contexts
Developing Goals for a Historic Context
Integrating Individual Historic Contexts—Creating the Preservation Plan
Coordinating with Management Frameworks
Recommended Sources of Technical Information

Managing the Planning Process

The preservation planning process must include an explicit approach to implementation, a provision for review and revision of all elements, and a mechanism for resolving conflicts within the overall set of preservation goals and between this set of goals and other land use planning goals. It is recommended that the process and its products be described in public documents.

Implementing the Process
The planning process is a continuous cycle. To establish and maintain such a process, however, the process must be divided into manageable segments that can be performed, within a defined period, such as a fiscal year or budget cycle. One means of achieving this is to define a period of time during which all the preliminary steps in the planning process will be completed. These preliminary steps would include setting a schedule for subsequent activities.

Review and Revision
Planning is a dynamic process. It is expected that the content of the historic contexts described in Standard I and the goals and priorities described in Standard II will be altered based on new information obtained as planning proceeds. The incorporation of this information is essential to improve the content of the plan and to keep it up-to-date and useful. New information must be reviewed regularly and systematically, and the plan revised accordingly.

Public Participation
introduction
Choosing an Appropriate Treatment for the Historic Building

The Standards are neither technical nor prescriptive, but are intended to promote responsible preservation practices that help protect our Nation's irreplaceable cultural resources. For example, they cannot, in and of themselves, be used to make essential decisions about which features of the historic building should be saved and which can be changed. But once a treatment is selected, the Standards provide philosophical consistency to the work.

The four treatment approaches are Preservation, Rehabilitation, Restoration, and Reconstruction, outlined below in hierarchical order and explained:

The first treatment, Preservation, places a high premium on the retention of all historic fabric through conservation, maintenance and repair. It reflects a building's continuum over time, through successive occupancies, and the respectful changes and alterations that are made.

Rehabilitation, the second treatment, emphasizes the retention and repair of historic materials, but more latitude is provided for replacement because it is assumed the property is more deteriorated prior to work. (Both Preservation and Rehabilitation standards focus attention on the preservation of those materials, features, finishes, spaces, and spatial relationships that, together, give a property its historic character.)

Restoration, the third treatment, focuses on the retention of materials from the most significant time in a property's history, while permitting the removal of materials from other periods.

Reconstruction, the fourth treatment, establishes limited opportunities to re-create a non-surviving site, landscape, building, structure, or object in all new materials.

Choosing the most appropriate treatment for a building requires careful decision-making about a building's historical significance, as well taking into account a number of other considerations:

Relative importance in history. Is the building a nationally significant resource—a rare survivor or the work of a master architect or craftsman? Did an important event take place in it? National Historic Landmarks, designated for their "exceptional significance in American history," or many buildings individually listed in the National Register often warrant Preservation or Restoration. Buildings that contribute to the significance of a historic district but are not individually listed in the National Register more frequently undergo Rehabilitation for a compatible new use.

Physical condition. What is the existing condition—or degree of material integrity—of the building prior to work? Has the original form survived largely intact or has it been altered over time? Are the alterations an important part of the building's history? Preservation may be appropriate if distinctive materials, features, and spaces are essentially intact and convey the building's historical significance. If the building requires more extensive repair and replacement, or if alterations or additions are necessary for a new use, then Rehabilitation is probably the most appropriate treatment. These key questions play major roles in
Standards for Preservation and Guidelines for Preserving Historic Buildings: Choc.

STANDARDS FOR PRESERVATION AND GUIDELINES FOR PRESERVING HISTORIC BUILDINGS

When the property's distinctive materials, features, and spaces are essentially intact and thus convey the historic significance without extensive repair or replacement; when depiction at a particular period of time is not appropriate; and when a continuing or new use does not require additions or extensive alterations, Preservation may be considered as a treatment. Prior to undertaking work, a documentation plan for Preservation should be developed.

Choosing Preservation as a Treatment

In Preservation, the options for replacement are less extensive than in the treatment, Rehabilitation. This is because it is assumed at the outset that building materials and character-defining features are essentially intact, i.e, that more historic fabric has survived, unchanged over time. The expressed goal of the Standards for Preservation and Guidelines for Preserving Historic Buildings is retention of the building's existing form, features and detailing. This may be as simple as basic maintenance of existing materials and features or may involve preparing a historic structure report, undertaking laboratory testing such as paint and mortar analysis, and hiring conservators to perform sensitive work such as reconstituting interior finishes. Protection, maintenance, and repair are emphasized while replacement is minimized.

Identify, Retain, and Preserve Historic Materials and Features

The guidance for the treatment Preservation begins with recommendations to identify the form and detailing of those architectural materials and features that are important in defining the building's historic character and which must be retained in order to preserve that character. Therefore, guidance on identifying, retaining, and preserving character-defining features is always given first. The character of a historic building may be defined by the form and detailing of exterior materials, such as masonry, wood, and metal; exterior features, such as roofs, porches, and windows; interior materials, such as plaster and paint; and interior features, such as moldings and stairways, room configuration and spatial relationships, as well as structural and mechanical systems; and the building's site and setting.

Stabilize Deteriorated Historic Materials and Features as a Preliminary Measure

Deteriorated portions of a historic building may need to be protected through preliminary stabilization measures until additional work can be undertaken. Stabilizing may include structural reinforcement, weatherization, or correcting unsafe conditions. Temporary stabilization should always be carried out in such a manner that it detracts as little as
possible from the historic building’s appearance. Although it may not be necessary in every preservation project, stabilization is nonetheless an integral part of the treatment Preservation; it is equally applicable, if circumstances warrant, for the other treatments.

Protect and Maintain Historic Materials and Features

After identifying those materials and features that are important and must be retained in the process of Preservation work, then protecting and maintaining them are addressed. Protection generally involves the least degree of intervention and is preparatory to other work. For example, protection includes the maintenance of historic materials through treatments such as rust removal, caulking, limited paint removal, and re-application of protective coatings; the cyclical cleaning of roof gutter systems; or installation of fencing, alarm systems and other temporary protective measures. Although a historic building will usually require more extensive work, an overall evaluation of its physical condition should always begin at this level.

Repair (Stabilize, Consolidate, and Conserve) Historic Materials and Features

Next, when the physical condition of character-defining materials and features requires additional work, repairing by stabilizing, consolidating, and conserving is recommended. Preservation strives to retain existing materials and features while employing as little new material as possible. Consequently, guidance for repairing a historic material, such as masonry, again begins with the least degree of intervention possible such as strengthening fragile materials through consolidation, when appropriate, and repointing with mortar of an appropriate strength. Repairing masonry as well as wood and architectural metal features may also include patching, splicing, or otherwise reinforcing them using recognized preservation methods. Similarly, within the treatment Preservation, portions of a historic structural system could be reinforced using contemporary materials such as steel rods. All work should be physically and visually compatible, identifiable upon close inspection and documented for future research.
Limited Replacement In Kind of Extensively Deteriorated Portions of Historic Features

If repair by stabilization, consolidation, and conservation proves inadequate, the next level of intervention involves the limited replacement in kind of extensively deteriorated or missing parts of features when there are surviving prototypes (for example, brackets, dentils, steps, plaster, or portions of slate or tile roofing). The replacement material needs to match the old both physically and visually, i.e., wood with wood, etc. Thus, with the exception of hidden structural reinforcement and new mechanical system components, substitute materials are not appropriate in the treatment Preservation. Again, it is important that all new material be identified and properly documented for future research. If prominent features are missing, such as an interior staircase, exterior cornice, or a roof dormer, then a Rehabilitation or Restoration treatment may be more appropriate.

Energy Efficiency/Accessibility Considerations/Health and Safety Code Considerations

These sections of the Preservation guidance address work done to meet accessibility requirements and health and safety code requirements; or limited retrofitting measures to improve energy efficiency. Although this work is quite often an important aspect of preservation projects, it is usually not part of the overall process of protecting, stabilizing, conserving, or repairing character-defining features; rather, such work is assessed for its potential negative impact on the building's historic character. For this reason, particular care must be taken not to obscure, damage, or destroy character-defining materials or features in the process of undertaking work to meet code and energy requirements.
Choosing Rehabilitation as a Treatment

In Rehabilitation, historic building materials and character-defining features are protected and maintained as they are in the treatment Preservation; however, an assumption is made prior to work that existing historic fabric has become damaged or deteriorated over time and, as a result, more repair and replacement will be required. Thus, latitude is given in the Standards for Rehabilitation and Guidelines for Rehabilitation to replace extensively deteriorated, damaged, or missing features using either traditional or substitute materials. Of the four treatments, only Rehabilitation includes an opportunity to make possible an efficient contemporary use through alterations and additions.

Identify, Retain, and Preserve Historic Materials and Features

Like Preservation, guidance for the treatment Rehabilitation begins with recommendations to identify the form and detailing of those architectural materials and features that are important in defining the building's historic character and which must be retained in order to preserve that character. Therefore, guidance on identifying, retaining, and preserving character-defining features is always given first. The character of a historic building may be defined by the form and detailing of exterior materials, such as masonry, wood, and metal; exterior features, such as roofs, porches, and windows; interior materials, such as plaster and paint; and interior features, such as moldings and stairways, room configuration and spatial relationships, as well as structural and mechanical systems.

Protect and Maintain Historic Materials and Features

After identifying those materials and features that are important and must be retained in the process of Rehabilitation work, then protecting and maintaining them are addressed. Protection generally involves the least degree of intervention and is preparatory to other work. For example, protection includes the maintenance of historic material through treatments such as rust removal, caulking, limited paint removal, and re-application of protective coatings; the cyclical cleaning of roof gutter systems; or installation of fencing, alarm systems and other temporary protective measures. Although a historic building will usually require more extensive work, an overall evaluation of its physical condition should
always begin at this level.

Repair Historic Materials and Features

Next, when the physical condition of character-defining materials and features warrants additional work repairing is recommended. Rehabilitation guidance for the repair of historic materials such as masonry, wood, and architectural metals again begins with the least degree of intervention possible such as patching, piecing-in, splicing, consolidating, or otherwise reinforcing or upgrading them according to recognized preservation methods. Repairing also includes the limited replacement in kind—or with compatible substitute material—of extensively deteriorated or missing parts of features when there are surviving prototypes (for example, brackets, dentils, steps, plaster, or portions of slate or tile roofing). Although using the same kind of material is always the preferred option, substitute material is acceptable if the form and design as well as the substitute material itself convey the visual appearance of the remaining parts of the feature and finish.

This two-story brick commercial building—with its corner storefront—was originally constructed ca. 1876, then remodeled in 1916 in the Craftsman style and given a new, distinctive roofline. It served a number of uses, including a hotel, boarding house, saloon, restaurant, liquor store, warehouse, and office furniture showroom. The red brick walls had been painted several times over the years. Rehabilitation work included removal of multiple paint layers using a chemical stripper and thorough water rinse; spot repointing with matching mortar; and appropriate interior alterations. The building is now being used as a retail shop. Photos: NPS files.

Replace Deteriorated Historic Materials and Features

Following repair in the hierarchy, Rehabilitation guidance is provided for replacing an entire character-defining feature with new material because the level of deterioration or damage of materials precludes repair (for example, an exterior cornice; an interior staircase; or a complete porch or storefront). If the essential form and detailing are still evident so that the physical evidence can be used to re-establish the feature as an integral part of the rehabilitation, then its replacement is appropriate. Like the guidance for repair, the preferred option is always replacement of the entire feature in kind, that is, with the same material. Because this approach may not always be technically or economically feasible, provisions are made to consider the use of a compatible substitute material. It should be noted that, while the National Park Service guidelines recommend the replacement of an entire character-defining feature that is extensively deteriorated, they never recommend removal and replacement with new material of a feature that—although damaged or deteriorated—could reasonably be repaired and thus preserved.
Design for the Replacement of Missing Historic Features

When an entire interior or exterior feature is missing (for example, an entrance, or cast iron facade; or a principal staircase), it no longer plays a role in physically defining the historic character of the building unless it can be accurately recovered in form and detailing through the process of carefully documenting the historical appearance. Although accepting the loss is one possibility, where an important architectural feature is missing, its replacement is always recommended in the Rehabilitation guidelines as the first or preferred, course of action. Thus, if adequate historical, pictorial, and physical documentation exists so that the feature may be accurately reproduced, and if it is desirable to re-establish the feature as part of the building's historical appearance, then designing and constructing a new feature based on such information is appropriate. However, a second acceptable option for the replacement feature is a new design that is compatible with the remaining character-defining features of the historic building. The new design should always take into account the size, scale, and material of the historic building itself and, most importantly, should be clearly differentiated so that a false historical appearance is not created.

Alterations/Additions for the New Use

Some exterior and interior alterations to a historic building are generally needed to assure its continued use, but it is most important that such alterations do not radically change, obscure, or destroy character-defining spaces, materials, features, or finishes. Alterations may include providing additional parking space on an existing historic building site; cutting new entrances or windows on secondary elevations; inserting an additional floor; installing an entirely new mechanical system; or creating an atrium or light well. Alteration may also include the selective removal of buildings or other features of the environment or building site that are intrusive and therefore detract from the overall historic character. The construction of an exterior addition to a historic building may seem to be essential for the new use, but it is emphasized in the Rehabilitation guidelines that such new additions should be avoided, if possible, and considered only after it is determined that those needs cannot be met by altering secondary, i.e., non character-defining interior spaces. If, after a thorough evaluation of interior solutions, an exterior addition is still judged to be the only viable alternative, it should be designed and constructed to be clearly differentiated from the historic building and so that the character-defining features are not radically changed, obscured, damaged, or destroyed. Additions and alterations to historic buildings are referenced within specific sections of the Rehabilitation guidelines such as Site, Roofs, Structural Systems, etc., but are addressed in detail in New Additions to Historic Buildings (see nav bar, right).

Energy Efficiency/Accessibility Considerations/Health and Safety Code Considerations

These sections of the guidance address work done to meet accessibility requirements and health and safety code requirements; or retrofitting measures to improve energy efficiency. Although this work is quite often an important aspect of Rehabilitation projects, it is usually not a part of the overall process of protecting or repairing character-defining features; rather, such work is assessed for its potential negative impact on the building's historic character. For this reason, particular care must be taken not to radically change, obscure, damage, or destroy character-defining materials or features in the process of meeting code and energy requirements.
Guidelines for Restoration:

When the property's design, architectural, or historical significance during a particular period of time outweighs the potential loss of extant materials, features, spaces, and finishes that characterize other historical periods; when there is substantial physical and documentary evidence for the work; and when contemporary alterations and additions are not planned, Restoration may be considered as a treatment. Prior to undertaking work, a particular period of time, i.e., the restoration period, should be selected and justified, and a documentation plan for Restoration developed.

Choosing Restoration as a Treatment

Rather than maintaining and preserving a building as it has evolved over time, the expressed goal of the Standards for Restoration and Guidelines for Restoring Historic Buildings is to make the building appear as it did at a particular—and most significant—time in its history. First, those materials and features from the "restoration period" are identified, based on thorough historical research. Next, features from the restoration period are maintained, protected, repaired (i.e., stabilized, consolidated, and conserved), and replaced, if necessary. As opposed to other treatments, the scope of work in Restoration can include removal of features from other periods; missing features from the restoration period may be replaced, based on documentary and physical evidence, using traditional materials or compatible substitute materials. The final guidance emphasizes that only those designs that can be documented as having been built should be re-created in a restoration project.

Identify, Retain, and Preserve Materials and Features from the Restoration Period

The guidance for the treatment Restoration begins with recommendations to identify the form and detailing of those existing architectural materials and features that are significant to the restoration period as established by historical research and documentation. Thus, guidance on *identifying, retaining, and preserving features from the restoration period* is always given first. The historic building's appearance may be defined by the form and detailing of its exterior materials, such as masonry, wood, and metal; exterior features, such as roofs, porches, and windows; interior materials, such as plaster and paint; and interior features, such as moldings and stairways, room configuration and spatial relationships, as well as structural and mechanical systems; and the building's site and setting.

Protect and Maintain Materials and Features from the Restoration Period

After identifying those existing materials and features from the restoration period that must be retained in the process of Restoration work, then *protecting and maintaining* them is
addressed. Protection generally involves the least degree of intervention and is preparatory to other work. For example, protection includes the maintenance of historic material through treatments such as rust removal, caulking, limited paint removal, and re-application of protective coatings; the cyclical cleaning of roof gutter systems; or installation of fencing, alarm systems and other temporary protective measures. Although a historic building will usually require more extensive work, an overall evaluation of its physical condition should always begin at this level.

Repair (Stabilize, Consolidate, and Conserve) Materials and Features from the Restoration Period

Next, when the physical condition of restoration period features requires additional work, repairing by stabilizing, consolidating, and conserving is recommended. Restoration guidance focuses upon the preservation of those materials and features that are significant to the period. Consequently, guidance for repairing a historic material, such as masonry, again begins with the least degree of intervention possible, such as strengthening fragile materials through consolidation, when appropriate, and repointing with mortar of an appropriate strength. Repairing masonry as well as wood and architectural metals includes patching, splicing, or otherwise reinforcing them using recognized preservation methods. Similarly, portions of a historic structural system could be reinforced using contemporary material such as steel rods. In Restoration, repair may also include the limited replacement in kind—or with compatible substitute material—of extensively deteriorated or missing parts of existing features when there are surviving prototypes to use as a model. Examples could include terra-cotta brackets, wood balusters, or cast iron fencing.

Replace Extensively Deteriorated Features from the Restoration Period

In Restoration, replacing an entire feature from the restoration period (i.e., a cornice, balustrade, column, or stairway) that is too deteriorated to repair may be appropriate. Together with documentary evidence, the form and detailing of the historic feature should be used as a model for the replacement. Using the same kind of material is preferred; however, compatible substitute material may be considered. All new work should be unobtrusively dated to guide future research and treatment. If documentary and physical evidence are not available to provide an accurate re-creation of missing features, the treatment Rehabilitation might be a better overall approach to project work.
In a project at Fort Hays, Kansas, the wood frame officers' quarters were restored to the late 1860s—their period of significance. This included replacing a missing kitchen ell, chimneys, porch columns, and cornice, as well as closing a later window opening in the main block. The building and others in the museum complex is used to interpret frontier history. Photo: NPS files.

Remove Existing Features from Other Historic Periods

Most buildings represent continuing occupancies and change over time, but in Restoration, the goal is to depict the building as it appeared at the most significant time in its history. Thus, work is included to remove or alter existing historic features that do not represent the restoration period. This could include features such as windows, entrances and doors, roof dormers, or landscape features. Prior to altering or removing materials, features, spaces, and finishes that characterize other historical periods, they should be documented to guide future research and treatment.

Re-Create Missing Features from the Restoration Period

Most Restoration projects involve re-creating features that were significant to the building at a particular time, but are now missing. Examples could include a stone balustrade, a porch, or cast iron storefront. Each missing feature should be substantiated by documentary and physical evidence. Without sufficient documentation for these "re-creations," an accurate depiction cannot be achieved. Combining features that never existed together historically can also create a false sense of history. Using traditional materials to depict lost features is always the preferred approach; however, using compatible substitute material is an acceptable alternative in Restoration because, as emphasized, the goal of this treatment is to replicate the "appearance" of the historic building at a particular time, not to retain and preserve all historic materials as they have evolved over time. If documentary and physical evidence are not available to provide an accurate re-creation of missing features, the treatment Rehabilitation might be a better overall approach to project work.

Energy Efficiency/Accessibility Considerations/Health and Safety Code Considerations

These sections of the Restoration guidance address work done to meet accessibility requirements and health and safety code requirements; or limited retrofitting measures to improve energy efficiency. Although this work is quite often an important aspect of restoration projects, it is usually not part of the overall process of protecting, stabilizing, conserving, or repairing features from the restoration period; rather, such work is assessed for its potential negative impact on the building’s historic appearance. For this reason, particular care must be taken not to obscure, damage, or destroy historic materials or features from the restoration period in the process of undertaking work to meet code and energy requirements.
STANDARDS FOR RECONSTRUCTION AND GUIDELINES FOR RECONSTRUCTING HISTORIC BUILDINGS

Choosing Reconstruction as a Treatment

Whereas the treatment Restoration provides guidance on restoring—or re-creating—building features, the Standards for Reconstruction and Guidelines for Reconstructing Historic Buildings address those aspects of treatment necessary to re-create an entire non-surviving building with new material. Much like restoration, the goal is to make the building appear as it did at a particular—and most significant—time in its history. The difference is, in Reconstruction, there is far less extant historic material prior to treatment and, in some cases, nothing visible. Because of the potential for historical error in the absence of sound physical evidence, this treatment can be justified only rarely and, thus, is the least frequently undertaken. Documentation requirements prior to and following work are very stringent. Measures should be taken to preserve extant historic surface and subsurface material. Finally, the reconstructed building must be clearly identified as a contemporary re-creation.

In the 1930s reconstruction of the 18th century Governor's Palace at Colonial Williamsburg, Virginia, the earliest archeological remains of the brick foundation were carefully preserved in situ, and serve as a base for the reconstructed walls. Photo: The Colonial Williamsburg Foundation.
Research and Document Historical Significance

Guidance for the treatment Reconstruction begins with researching and documenting the building's historical significance to ascertain that its re-creation is essential to the public understanding of the property. Often, another extant historic building on the site or in a setting can adequately explain the property, together with other interpretive aids. Justifying a reconstruction requires detailed physical and documentary evidence to minimize or eliminate conjecture and ensure that the reconstruction is as accurate as possible. Only one period of significance is generally identified; a building, as it evolved, is rarely re-created. During this important fact-finding stage, if research does not provide adequate documentation for an accurate reconstruction, other interpretive methods should be considered, such as an explanatory marker.

Investigate Archeological Resources

Investigating archeological resources is the next area of guidance in the treatment Reconstruction. The goal of physical research is to identify features of the building and site which are essential to an accurate re-creation and must be reconstructed, while leaving those archeological resources that are not essential, undisturbed. Information that is not relevant to the project should be preserved in place for future research. The archeological findings, together with archival documentation, are then used to replicate the plan of the building, together with the relationship and size of rooms, corridors, and other spaces, and spatial relationships.

Identify, Protect and Preserve Extant Historic Features

Closely aligned with archeological research, recommendations are given for identifying, protecting, and preserving extant features of the historic building. It is never appropriate to base a Reconstruction upon conjectural designs or the availability of different features from other buildings. Thus, any remaining historic materials and features, such as remnants of a foundation or chimney and site features such as a walkway or path, should be retained, when practicable, and incorporated into the reconstruction. The historic as well as new material should be carefully documented to guide future research and treatment.

Reconstruct Non-Surviving Building and Site

After the research and documentation phases, guidance is given for Reconstruction work itself. Exterior and interior features are addressed in general, always emphasizing the need for an accurate depiction, i.e., careful duplication of the appearance of historic interior paints, and finishes such as stencilling, marbling, and graining. In the absence of extant historic materials, the objective in reconstruction is to re-create the appearance of the historic building for interpretive purposes. Thus, while the use of traditional materials and finishes is always preferred, in some instances, substitute materials may be used if they are able to convey the same visual appearance. Where non-visible features of the building are concerned—such as interior structural systems or mechanical systems—it is expected that contemporary materials and technology will be employed. Re-creating the building site should be an integral aspect of project work. The initial archeological inventory of subsurface and aboveground remains is used as documentation to reconstruct landscape features such as walks and roads, fences, benches, and fountains.
Energy Efficiency/Accessibility/Health and Safety Code Considerations

Code requirements must also be met in Reconstruction projects. For code purposes, a reconstructed building may be considered as essentially new construction. Guidance for these sections is thus abbreviated, and focuses on achieving design solutions that do not destroy extant historic features and materials or obscure reconstructed features.
Since their publication in 1976, the Secretary's Standards have been used by State Historic Preservation Officers and the National Park Service to ensure that projects receiving federal money or tax benefits were reviewed in a consistent manner nationwide. The principles embodied in the Standards have also been adopted by hundreds of preservation commissions across the country in local design guidelines.

In 1992, the Standards were revised so that they could be applied to all historic resource types included in the National Register of Historic Places—buildings, structures, sites, objects, districts, and landscapes. The revised Standards were reduced to four sets by incorporating protection and stabilization into preservation, and by eliminating acquisition, which is no longer considered a treatment. Retitled, The Secretary of the Interior's Standards for the Treatment of Historic Properties, this new, modified version addresses four treatments: preservation, rehabilitation, restoration, and reconstruction. The Guidelines for the Treatment of Cultural Landscapes illustrate how to apply these four treatments to cultural landscapes in a way that meets the Standards.

Of the four, Preservation standards require retention of the greatest amount of historic fabric, including the landscape's historic form, features, and details as they have evolved over time. Rehabilitation standards acknowledge the need to alter or add to a cultural landscape to meet continuing or new uses while retaining the landscape's historic character. Restoration standards allow for the depiction of a landscape at a particular time in US history by preserving materials from the period of significance and removing materials from other periods. Reconstruction standards establish a framework for recreating a vanished or non-surviving landscape with new materials, primarily for interpretive purposes.


Preservation Planning and the Treatment of Cultural Landscapes

CAREFUL PLANNING PRIOR TO TREATMENT can help prevent irrevocable damage to a cultural landscape. Professional techniques for identifying, documenting, and treating cultural landscapes have advanced over the past twenty-five years and are continually being refined. As described in the National Park Service publication, Preservation Brief #36: Protecting Cultural Landscapes, the preservation planning...
process for cultural landscapes should involve: historical research; inventory and
documentation of existing conditions; site analysis and evaluation of integrity and
significance; development of a cultural landscape preservation approach and
treatment plan; development of a cultural landscape management plan and
management philosophy; development of a strategy for ongoing maintenance;
and, preparation of a record of treatment and future research recommendations.

In all treatments for cultural landscapes, the following general recommendations
and comments apply:

1. Before undertaking project work, research of a cultural landscape is
essential. Research findings help to identify a landscape's historic period(s)
of ownership, occupancy and development, and bring greater
understanding of the associations that make them significant. Research
findings also provide a foundation to make educated decisions for project
treatment, and can guide management, maintenance, and interpretation. In
addition, research findings may be useful in satisfying compliance reviews
(e.g. Section 106 of the National Historic Preservation Act as amended).

2. Although there is no single way to inventory a landscape, the goal of
documentation is to provide a record of the landscape as it exists at the
present time, thus providing a baseline from which to operate. All
component landscapes and features (see definitions below) that contribute
to the landscape's historic character should be recorded. The level of
documentation needed depends on the nature and the significance of the
resource. For example, plant material documentation may ideally include,
botanical name or species, common name and size. To ensure full
representation of existing herbaceous plants, care should be taken to
document the landscape in different seasons. This level of research may
most often be the ideal goal for smaller properties, but may prove
impractical for large, vernacular landscapes.

3. Assessing a landscape as a continuum through history is critical in
assessing cultural and historic value. By analyzing the landscape, change
over time -the chronological and physical "layers" of the landscape -can be
understood. Based on analysis, individual features may be attributed to a
discrete period of introduction, their presence or absence substantiated to a
given date and, therefore the landscape's significance and integrity
evaluated. In addition, analysis allows the property to be viewed within the
context of other cultural landscapes.

4. In order for the landscape to be considered significant, character-defining
features that convey its significance in history must not only be present, but
they also must possess historic integrity. Location, setting, design,
materials, workmanship, feeling and association should be considered in
determining whether a landscape and its character-defining features
possess historic integrity.

5. Preservation planning for cultural landscapes involves a broad array of
dynamic variables. Adopting comprehensive treatment and management
plans, in concert with a preservation maintenance strategy, acknowledges a
cultural landscape's ever-changing nature and the interrelationship of
treatment, management and maintenance.
Some Factors to Consider When Selecting an Appropriate Treatment

The Standards are neither technical nor prescriptive, but are intended to promote responsible preservation practices that help protect our Nation's irreplaceable cultural resources. They cannot be used to make essential decisions about which contributing features of a cultural landscape should be retained and which can be changed. But once a specific treatment is selected, the Standards can provide the necessary philosophical framework for a consistent and holistic approach for a cultural landscape project.

A treatment is a physical intervention carried out to achieve a historic preservation goal — it cannot be considered in a vacuum. There are many practical and philosophical variables that influence the selection of a treatment for a landscape. These include, but are not limited to, the extent of historic documentation, existing physical conditions, historic value, proposed use, long and short term objectives, operational and code requirements (e.g. accessibility, fire, security) and anticipated capital improvement, staffing and maintenance costs. The impact of the treatment on any significant archeological and natural resources should also be considered in this decision making process. Therefore, it is necessary to consider a broad array of dynamic and interrelated variables in selecting a treatment for a cultural landscape preservation project.

For some cultural landscapes, especially those that are best considered ethnographic or heritage landscapes, these Guidelines may not apply. However, if people working with these properties decide that community coherence may be affected by physical place and space—or if there is potential for loss of landscape character whose significance is rooted in the community's activities and processes (or other aspects of its history)—this guide may be of service.

• **Change and Continuity:** There is a balance between change and continuity in all-cultural resources. Change is inherent in cultural landscapes; it results from both natural processes and human activities. Sometimes that change is subtle, barely perceptible as with the geomorphological effects on landform. At other times, it is strikingly obvious, as with vegetation, either in the cyclical changes of growth and reproduction or the progressive changes of plant competition and succession. This dynamic quality of all cultural landscapes is balanced by the continuity of distinctive characteristics retained over time. For, in spite of a landscape's constant change (or perhaps because of it), a property can still exhibit continuity of form, order, use, features, or materials. Preservation and rehabilitation treatments seek to secure and emphasize continuity while acknowledging change.

• **Relative Significance in History:** A cultural landscape may be a significant resource as a rare survivor or the work of an important landscape architect, horticulturist or designer. It may be the site of an important event or activity, reflect cultural traditions, or other patterns of settlement or land use. This significance
may be derived from local, regional, or national importance. Cultural landscapes may be listed in the National Register of Historic Places individually or as contributing features in a historic district. In some instances, cultural landscapes may be designated National Historic Landmarks by the Secretary of the Interior for their exceptional significance in American history.

- **Integrity and Existing Physical Condition:** Prior to selecting a treatment, it is important to understand and evaluate the difference between integrity and existing conditions. Integrity is the authenticity of a cultural landscape's historic identity: it is the physical evidence of its significance. Existing conditions can be defined as the current physical state of the landscape's form, order, features and materials. For example, the integrity of an abandoned garden may be clear based on its extant form, features, and materials, but existing conditions may be poor, due to neglect or deferred maintenance.

- **Geographical Context:** The surroundings of a cultural landscape, whether an urban neighborhood or rural farming area, may contribute to its significance and its historic character and should be considered prior to treatment. The setting may contain component landscapes or features (see definitions, page 9) which fall within the property's historic boundaries. It also may be comprised of separate properties beyond the landscape's boundaries, and perhaps those of the National Register listing. The landscape context can include the overall pattern of the circulation networks, views and vistas into and out of the landscape, land use, natural features, clusters of structures, and division of properties.

- **Use.** Historic, current, and proposed use of the cultural landscape must be considered prior to treatment selection. Historic use is directly linked to its significance [bottom left], while current and proposed use(s) can affect integrity and existing conditions. Parameters may vary from one landscape to another. For example, in one agricultural landscape, continuation of the historic use can lead to changes in the physical form of a farm to accommodate new crops and equipment. In another agricultural property, new uses may be adapted within the landscape's existing form. Order and features.

- **Archeological Resources:** Prehistoric and historic archeological resources may be found in cultural landscapes above and below the ground [below] and even under water. Examples of prehistoric archeological resources include prehistoric mounds built by Native-Americans. Examples of historic archeological resources include remnants of buildings, cliff dwellings, and villages; or, features of a sunken garden, mining camp, or battlefield. These resources not only have historical value, but can also reveal significant information about a cultural landscape. The appropriate treatment of a cultural landscape includes the identification and preservation of significant archeological resources. Many landscape preservation projects include a site archeologist.

- **Natural Systems:** Cultural landscapes often derive their character from a human response to natural features and systems. The significance of these natural resources may be based on their cultural associations and from their inherent ecological values. Natural resources form natural systems that are interdependent on one another and which may extend well beyond the boundary of the historic property. For example, these systems can include geology,
hydrology, plant and animal habitats, and climate. Some of these natural resources are particularly susceptible to disturbances caused by changes in landscape management. Many natural resources such as wetlands or rare species fall under local, state, and federal regulations, which must be considered. Since natural resource protection is a specialized field distinct from cultural landscape preservation, a preservation planning team may want to include an expert in this area to address specific issues or resources found within a cultural landscape. Natural systems are an integral part of the cultural landscape and must be considered when selecting an appropriate treatment.

- **Management and Maintenance:** Management strategies are long-term and comprehensive. They can be one of the means for implementing a landscape preservation plan. Maintenance tasks can be day-to-day, seasonal, or cyclical, as determined by management strategies. Although routine horticultural activities, such as mowing and weeding, or general grounds maintenance, such as re-laying pavement or curbs, may appear routine, such activities can cumulatively alter the character of a landscape. In contrast, well-conceived management and maintenance activities can sustain character and integrity over an extended period. Therefore, both the management and maintenance of cultural landscapes should be considered when selecting a treatment.

- **Interpretation:** Interpretation can help in understanding and "reading" the landscape. The tools and techniques of interpretation can include guided walks, self-guided brochures, computer-aided tours, exhibits, and wayside stations. Interpretive goals should compliment treatment selection, reflecting the landscape's significance and historic character. A cultural landscape may possess varying levels of integrity or even differing periods of significance, both of which can result in a multi-faceted approach to interpretation. In some cases, interpretation and a sound interpretive strategy can inform decisions about how to treat a landscape.

- **Special Requirements:** Work that must be done to meet accessibility, health and safety, environmental protection or energy efficiency needs is usually not part of the overall process of protecting cultural landscapes; rather this work is assessed for its potential impact on the cultural landscape.

- **Accessibility Considerations:** It is often necessary to make modifications to cultural landscapes so that they will be in compliance with current accessibility code requirements. Three specific Federal laws require accessibility to certain cultural landscapes: the Architectural Barriers Act of 1968, Section 504 of the Rehabilitation Act of 1973, and the Americans With Disabilities Act of 1990. Federal rules, regulations and standards have been developed which provide guidance on how to accomplish access to historic areas for people with disabilities. Work must be carefully planned and undertaken so that it does not result in the loss of character-defining features. The goal is to provide the highest level of access with the lowest level of impact on the integrity of the landscape.

- **Health and Safety Considerations:** In undertaking work on cultural landscapes, it is necessary to consider the impact that meeting current health and safety codes (for example, public health, life safety, fire safety, electrical, seismic,
Guidelines for Treatment of Historic Landscape Initiative, National Park Service

structural, and building codes) will have on character-defining features. For example, upgrading utility service, storm or sewer drainage systems requires trenching which can disturb soils, plants and archaeological resources. Special coordination with the responsible code officials at the state, county, or municipal level may be required. Securing required permits and licenses is best accomplished early in project planning work. It is often necessary to look beyond the "letter" of code requirements to their underlying purpose; most modern codes allow for alternative approaches and reasonable variance to achieve compliance.

- **Environmental Protection Requirements:** Many cultural landscapes are affected by requirements that address environmental issues. Legislation at the federal, state and municipal level have established rules and regulations for dealing with a variety of natural resources -- including water, air, soil and wildlife. Work predicated on such legislation must be carefully planned and undertaken so that it does not result in the loss of a landscape's character-defining features. Securing required permits and licenses should be considered early in project work, and special efforts should be made to coordinate with public agencies responsible for overseeing specific environmental concerns.

- **Energy Efficiency:** Some features of a cultural landscape, such as buildings, structures, vegetation and furnishings, can play an energy-conserving role. Therefore, prior to undertaking project work to achieve greater energy efficiency, the first step should always be to identify and evaluate existing historic features to assess their inherent energy conserving potential. If it is determined that such work is appropriate, then it needs to be carried out with particular care to insure that the landscape's historic character is retained.
2001 NPS Management Policies

Cover

Management of National Park Service Programs

This volume of Management Policies focuses exclusively on management of the national park system. Beyond managing the national park system, the National Park Service administers a broad range of programs that serve the conservation and recreation needs of the nation and the world. Examples include the—

- National Register of Historic Places;
- National Historic Landmarks Program;
- National Natural Landmarks Program;
- Land and Water Conservation Fund Grants Program;
- Historic American Building Survey;
- Historic American Engineering Record;
- American Battlefield Protection Program;
- National Maritime Heritage Grants Program;
- Rivers, Trails and Conservation Assistance Program; and
- Tribal Heritage Preservation Grants Program.

Although these programs operate mainly outside the national parks, they form a vital part of the National Park Service mission. Information about the policies and procedures that govern these programs will be incorporated into a companion volume which will be issued as soon as practicable. Until the companion volume is issued, information may be obtained from the appropriate NPS program managers (who are generally located in Washington, D. C.), or by visiting the NPS web site at www.nps.gov.

U. S. Department of the Interior

The mission of the Department of the Interior is to protect and provide access to our Nation’s natural and cultural heritage and honor our trust responsibilities to tribes. We:

- encourage and provide for the appropriate management, preservation, and operation of the Nation’s public lands and natural resources for use and enjoyment both now and in the future;
- carry out related scientific research and investigations in support of these objectives;
- develop and use resources in an environmentally sound manner, and provide an equitable return on these resources to the American taxpayer; and
- carry out trust responsibilities of the U. S. Government with respect to American Indians and Alaska Natives.

National Park Service

The National Park Service is a bureau within the Department of the Interior. We preserve unimpaired the natural and cultural resources and values of the national park system for the enjoyment, education, and inspiration of this and future generations. We also cooperate with partners to extend the benefits of natural and cultural resource conservation and outdoor recreation throughout this country and the world.

Introduction

Law, Policy, and Other Guidance

This volume is the basic Service-wide policy document of the National Park Service. Adherence to policy is mandatory unless specifically waived or modified by the Secretary, the Assistant Secretary, or the Director.

In carrying out their responsibilities under the 1916 National Park Service Organic Act and other pertinent
statutes, all NPS officials and employees must be knowledgeable about the laws, regulations, and policies that pertain to their work. The property clause of the U. S. Constitution, which is the supreme law of the United States, gives Congress the authority to develop laws governing the management of the national park system. The property clause specifically directs that "The Congress will have the Power to dispose of and make all needful Rules and Regulations respecting the Territory or other Property belonging to the United States" (article IV, section 3). Once laws are enacted, authority for interpreting and implementing them is delegated to appropriate levels of government. In carrying out this function, the Park Service, like other federal agencies, develops policy to interpret the ambiguities of the law and to fill in the details left unaddressed by Congress in statutes.

Hierarchy of Authorities

The management of the national park system and NPS programs is guided by the Constitution, public laws, treaties, proclamations, Executive orders, regulations, and directives of the Secretary of the Interior and the Assistant Secretary for Fish and Wildlife and Parks. NPS policy must be consistent with these higher authorities, and with appropriate delegations of authority. Many of the statutes and other guidance affecting the various facets of NPS administration and management are cited for reference purposes throughout Management Policies. Other laws, regulations, and policies related to the administration of federal programs, although not cited, may also apply. For example, many, but not all, of the legislative exceptions of the Alaska National Interest Lands Conservation Act (ANILCA) are cited at different places throughout Management Policies. The additional legislative exceptions of ANILCA, although not cited, must also be considered in the interpretation and application of these policies, as must all other applicable legislative exceptions and requirements. It is especially important that superintendents and other park staff review their park's enabling legislation to determine whenever it contains explicit guidance that would prevail over Service-wide policy.

Policy Development

Policy sets the framework and provides direction for all management decisions. This direction may be general or specific; it may prescribe the process through which decisions are made, how an action is to be accomplished, or the results to be achieved. Policy initiatives may originate as a sudden, urgent response to an unanticipated problem or issue, or through a slow, evolutionary process as the Service gains increased experience or insight regarding a problem or issue. Sometimes the initiative does not originate within the Service, but rather with persons or organizations outside the Service who have a strong interest in how the Service manages the parks. However, NPS policy is usually developed through a concerted workgroup and consensus-building team effort involving extensive field review, consultation with NPS senior managers, and review and comment by affected parties and the general public.

All policy must be articulated in writing and be approved by a National Park Service official who has been delegated authority to issue the policy. Policy must be published or otherwise made available to the public—particularly those whom it affects—and those who must implement it in the Washington office, regional offices, and parks. Unwritten or informal "policy," and various understandings of NPS traditional practices, will not be recognized as official policy.

Compliance and Accountability

Service-wide policy is articulated by the Director of the National Park Service. Adherence to policy is mandatory unless specifically waived or modified in writing by the Secretary, the Assistant Secretary, or the Director. Waivers and modifications will be considered on a case-by-case basis, and previous waivers or modifications will not necessarily be regarded as precedents for future waivers or modifications. Park superintendents will be held accountable for their, and their staff's, adherence to Service-wide policy. A request for a waiver or modification of policy must include a written justification and be submitted to the Director through the Office of Policy, which will coordinate with appropriate program offices.

The Directives System

This volume of NPS Management Policies is the basic Service-wide policy document of the National Park Service, superseding the 1988 edition. It is the highest of three levels of guidance documents in the NPS Directives System. The Directives System is designed to provide NPS management and staff with clear and continuously updated information on NPS policy and required and/or recommended actions, as well as any other
information that will help them manage parks and programs effectively.

Management Policies will be revised at appropriate intervals to consolidate Service-wide policy decisions, or to respond to new laws and technologies, new understandings of park resources and the factors that affect them, or changes in American society. Interim updates or amendments may be accomplished through Director's Orders (the second level of the Directives System), which also serve as a vehicle to clarify or supplement Management Policies to meet the needs of NPS managers. Any previously dated statement of policy not consistent with these Management Policies, or with a Director's Order that updates, amends, or clarifies policy, is to be disregarded.

Under the Directives System, the most detailed and comprehensive guidance on implementing Service-wide policy is found in "level 3" documents, which are usually in the form of handbooks or reference manuals issued by associate directors. These documents provide NPS field employees with a compilation of legal references, operating policies, standards, procedures, general information, recommendations, and examples to assist them in carrying out Management Policies and Director’s Orders. Level 3 documents may not impose any new Service-wide requirements unless the Director has specifically authorized them to do so, but may reiterate or compile requirements (i.e., laws, regulations, policies) that have been imposed by higher authorities.

It is important to note that the Directives System is a relatively new creation of the National Park Service, retaining NPS Management Policies, but replacing (on a phased schedule) the guidelines, special directives, and staff directives issued under the former system. Many Director's Orders planned for completion were not yet approved when this edition of Management Policies was published. Anyone who needs additional information about a Director’s Order that has not yet been approved should contact the NPS program manager responsible for the particular subject matter, or the Office of Policy in Washington, DC. (See Appendix C for a listing of Director’s Orders.)

Another minor issue associated with timing is that a few of the policy statements made in this edition of Management Policies are not entirely consistent with existing regulations. In these cases, it is the Service's intent to revise the inconsistent regulations to more fully comport with the new policy statements. However, until the regulations are formally revised through the rulemaking procedure, they will remain in effect—even though they no longer accurately reflect NPS policy.

Other Sources of Guidance

Instructions, guidance, and directives of regional or otherwise limited application supplementary to, and in conformance with, Service-wide policies may be issued by regional directors or associate directors within formal delegations of authority. Superintendents may issue, within formal delegations of authority, park-specific instructions, procedures, directives, and other supplementary guidance (such as hours of operation or dates for seasonal openings), provided the guidance does not conflict with Service-wide policy.

National Park Service Program Policies

This volume addresses only those policies applicable to management of the national park system. A second volume—to be added at a later date—will address policies applicable to NPS-administered programs that serve the conservation and recreation needs of the nation, but are not directly related to the national park system. Examples include the National Register of Historic Places; the Land and Water Conservation Fund grants program; the Historic American Buildings Survey; the American Battlefield Protection Program; the National Maritime Heritage Grants Program; the Rivers, Trails and Conservation Assistance Program; and the Tribal Heritage Preservation Grants Program.

1The terms “National Park Service,” “Park Service,” “Service,” and “NPS” are used interchangeably in this document.
DIRECTOR'S ORDER #2: PARK PLANNING

Approved: /s/ Robert Stanton (signed original on file)
Director, National Park Service

Effective Date: May 27, 1998

Sunset Date: May 27, 2002

1.0. Purpose

1.1. This director's order revises and replaces the policies and guidance included in chapter 2 of the National Park Service Management Policies (1988) and the NPS-2 Planning Process Guideline (1982) as they relate to park planning. Policies and guidelines concerning the studies of potential new additions to the national park system, the national wild and scenic rivers system, and the national trails system outlined in the Management Policies, NPS-2, and Special Directive 92-11 will remain in effect until revised by future actions.

1.2. This director's order documents the decision-making processes that result in the goals and actions specific to each unit of the national park system and those units of the national trails system administered by the National Park Service. Park planning is a vital intermediary step that links servicewide planning and decision making to park operations.

1.3. Coordinating and integrating all the various types of park planning is essential. The planning and decision-making framework presented here compiles and integrates all servicewide directives related to park planning, regardless of whether they are associated with the general management planning program, the resource management programs (including compliance with the National Environmental Policy Act and the National Historic Preservation Act), the visitor services program, the construction program, or the performance management system that is being implemented to comply with the Government Performance and Results Act (GPRA). This order will be closely coordinated with other director's orders and updated and revised every two to four years to ensure that direction for park planning remains consistent across the National Park Service.

1.4. The associate director for professional services is delegated the authority to establish program standards for park planning. Together Director's Order 2 and its program standards provide the information needed by park superintendents and other managers throughout the National Park Service to direct effective and efficient park planning in cooperation with the public and our partners. More detailed information about specific procedures, techniques, and tools will be compiled in a separate sourcebook (scheduled for distribution in 1998). The sourcebook will constitute the level three guidance for park planning under the new NPS directive system.

2.0. Authority

This director's order is issued pursuant to 16 USC 1 through 4 (the National Park Service Organic Act).

3.0. NPS Park Planning Policy

NPS management policies are hereby revised to read as follows.
3.1.0. General Principles

3.1.1. The National Park Service will take a comprehensive approach to planning for how resources, visitors, and facilities will be managed to carry out the mission of the National Park Service and each individual park. The National Park Service has a mandate in its Organic Act and other legislation to preserve resources unimpaired for the enjoyment of future generations. NPS park planning will help define what types of resource conditions, visitor uses, and management actions will best achieve that mandate.

3.1.2. The National Park Service will use planning to bring logic, analysis, public involvement, and accountability into the decision-making process.

- **Logic** - Park planning and decision making will be conducted as a continuous, dynamic process that extends from broad visions shared with the public to individual, annual work assignments and evaluations. Each park will be able to demonstrate to decision makers, staff, and the public how decisions relate to one another in terms of a logical, trackable rationale.

- **Public Involvement** - Public participation in planning and decision making will ensure that the National Park Service fully understands and considers the publics' interests in the parks as part of their national heritage, cultural traditions, and community surroundings. To the maximum extent possible, the National Park Service will actively seek out and consult with existing and potential visitors, neighbors, people with traditional cultural ties to park lands, scientists and scholars, concessioners, cooperating associations, other partners, and government agencies. The Park Service will work cooperatively with others to improve the condition of parks, to expand public service, and to integrate parks into sustainable ecological, cultural, and socioeconomic systems.

- **Accountability** - Management teams will be held accountable for identifying and accomplishing long-term goals and annual goals as incremental steps toward fully carrying out the park mission. Such planning will be a critical and essential part of the National Park Service performance management system that is designed to improve the agency's performance and results.

3.2.0. Major Elements of NPS Park Planning and Decision Making

1. A logical, trackable rationale for decisions will be created through several levels of planning that become increasingly detailed and complementary by agreeing first on why the park was established and what resource conditions and visitor experiences should exist there, and then by becoming increasingly focused on how those conditions should be achieved. More specifically, park managers and staffs will be able to articulate and share with the public
3.2.3. This director's order recognizes that many parks will initially lack some elements of a logical, trackable rationale as described here and that updating plans to bring them into conformance will take time. In the interim, parks will work off the information in their current approved plans and identify and fill gaps in the overall framework as quickly as feasible.

3.3.0. Park Planning Processes

3.3.1. The elements necessary for a logical, trackable rationale for decision making will be created and updated through four closely interrelated planning processes: general management planning, park strategic planning, implementation planning, and annual performance planning. The order of these processes will generally flow from broad-scale general management planning through progressively more specific strategic planning, implementation planning, and annual performance planning and reporting. When scoping a plan, it will be important to distinguish which issues can most appropriately be addressed by general management planning and which will most appropriately be addressed by more detailed strategic or implementation planning. The results of planning and decision making will be monitored by the park staff, and information will be fed back into the processes at appropriate junctures. If goals are not being met, management teams will seek to understand why and to identify appropriate actions for moving closer to goals. Occasionally the broadest level decisions about ultimate goals will be reassessed to reflect new knowledge or previously unforeseen circumstances, then the cycle will resume.

3.3.2. Each process will have its own particular requirements; however, to the maximum extent possible, these processes will accommodate the overarching goal of minimizing duplication and confusion in park planning. This will be accomplished by establishing uniform definitions for decision-making elements shared by more than one process and by explaining how all the elements interrelate in a single park planning and decision-making framework.

3.3.3. Elements that were previously included in other planning processes (e.g., statement for management) are now included in the four NPS park planning processes described below.
3.3.1.0. General Management Planning

3.3.1.1. The National Park Service will maintain an up-to-date general management plan (GMP) for each unit of the national park system. The purpose of this plan will be to ensure that each park has a clearly defined direction for resource preservation and visitor use. This basic foundation for decision making will be developed in consultation with servicewide program managers, interested parties, and the general public. It will be based on an adequate analysis of existing and potential resource conditions and visitor experiences, environmental (including natural, cultural, and socioeconomic) impacts, and costs of alternative courses of action.

3.3.1.2. General management planning will constitute the first phase of tiered planning and decision making. It will focus on why the park was established and what resource conditions and visitor experiences should be achieved and maintained over time. The general management plan will take the long view, which may be many years into the future when dealing with the time frames of natural and cultural processes. The plan will consider the park holistically (in its full ecological and cultural contexts) as a unit of the national park system and as part of a surrounding region. It will identify the importance of partnerships with others in protecting park resources and providing appropriate visitor services. The general management plan will also identify connections among the various park programs and park management districts. This will help avoid inadvertently creating new problems in one area, while attempting to solve problems in another. Decisions about site-specific actions will be deferred to implementation planning. More detailed, site-specific analyses of implementation plan alternatives will be required before any major federal action is undertaken.

3.3.1.3. General management plans will contain the following decision-making elements: mission, mission goals, and management prescriptions (refer to the program standards for a detailed description of each element). The management prescriptions will meet all of the GMP legal requirements contained in the National Parks and Recreation Act of 1978 and will address the preservation of the park resources, the types and general intensities of development, visitor carrying capacities for all areas of the unit, and the indications of potential boundary modifications (the program standards for management prescriptions address these GMP legal requirements in detail).

3.3.1.4. General management planning will be conducted by an interdisciplinary team, including park managers and technical experts, who will consult with other knowledgeable persons inside and outside the agency and with the general public. Decisions will be based on a scientific and scholarly understanding of the park ecosystems and cultural contexts (both internal and external to the park boundaries). If information is inadequate, planning and decision making will be deferred until adequate information is available for the type of decisions to be made.

3.3.1.5. During general management planning, resource values and land uses will be systematically analyzed using the best information available, and alternatives and their impacts will be rigorously explored. In reaching decisions concerning future management of park resources, planning teams will seek, to the extent possible, to reach agreement among the park staff, the NPS leadership, other agencies with jurisdiction by law or expertise, and the public.

3.3.1.6. The analysis of GMP alternatives will meet the program standards for NPS implementation of the National Environmental Policy Act (NEPA) and related legislation, including the National Historic Preservation Act (NHPA). An environmental impact statement (EIS) will be prepared for general
management plans. In a few cases, after completion of scoping and where initial analysis of alternatives and impacts clearly indicate that there is no potential for significant impact by any alternative, an exception to the general rule may be made by the associate director, natural resources stewardship and science, after consultation with the Environmental Quality Division. Where both the National Environmental Policy Act and sections 106 and 110 of the National Historic Preservation Act apply, NEPA procedures will be used to inform the public about undertakings with the potential to affect properties listed on or eligible for listing on the National Register of Historic Places, in conjunction with the Advisory Council on Historic Preservation's regulatory provisions on coordination with NEPA. (Refer to the director's orders related to compliance with the National Environmental Policy Act and to cultural resources management.)

3.3.1.7. Public involvement will be adequate to learn about the concerns, issues, expectations, and values of existing and potential visitors, park neighbors, people with traditional cultural ties to lands within the park, concessioners, cooperating associations, other partners, scientists and scholars, and other government agencies. Through public involvement the National Park Service will share information about the planning process, issues, and proposed management actions; learn about the values placed by other people and groups on the same resources and visitor experiences; and build support among local publics, visitors, Congress, and others for implementing the plan.

3.3.1.8. General management planning will be conducted as part of cooperative regional planning whenever possible. NPS participation in cooperative regional planning will be undertaken in the hope of better coordinating and focusing the independent and autonomous efforts of multiple parties. NPS participation in such planning efforts will not be intended to prevent reasonable uses of private lands and will acknowledge the rights and interests of other landowners. While being consistent with NPS management policies and park goals, plans will identify and consider potential effects outside as well as inside the park boundaries and will identify ways to enhance beneficial effects and mitigate adverse effects to the maximum extent possible.

3.3.1.9. General management plans will be reviewed and revised as necessary to keep them current. It is anticipated that such reviews will be needed every 10-15 years or sooner if conditions change more rapidly. Even in parks with strong traditions and entrenched patterns of use and development, decision makers will benefit from occasionally stepping back and reassessing their overall goals, particularly if resources are threatened, sites are crowded, or the park's built environment requires extensive rehabilitation or maintenance. This will give everyone with a major stake in the park an opportunity to revalidate the park's role in the nation and in the region and to reconfirm that the kinds of resource conditions and visitor experiences being pursued are the best possible mix for the future. An approved general management plan may be amended, rather than revised, if conditions and management prescriptions over most of the plan area remain essentially unchanged from those present when the plan was originally approved.

3.3.2.0. Strategic Planning

3.3.2.1. Strategic planning, required by the Government Performance and Results Act of 1993, will be conducted for the National Park Service as a whole, and every park, program, and central office will have its own strategic plan. Parks, programs, and central offices engage in strategic planning to achieve better results in their mission of protecting resources and providing for visitor enjoyment. Performance management is a way to measure real progress and the level of accomplishment related to specific park, program, or central office goals.

3.3.2.2. To fulfill the purposes for
implementing the Government Performance and Results Act in the National Park Service, park strategic plans will contain the following decision-making elements: mission, mission goals, long-term goals, and resource assessment (the elements marked with an asterisk in the chart above; refer to the program standards for a detailed description of each element). Park strategic plans will be based on the servicewide strategic plan, incorporating and reporting on the progress made toward meeting the servicewide mission goals and long-term goals.

3.3.2.3. Park strategic plans will be developed according to the eight-step performance management process developed by the National Park Service for compliance with the Government Performance and Results Act. At the park strategic planning level, analysis will be focused on understanding the park's capability to set and meet long-term goals through a resource assessment of its fiscal and human resources. This resource assessment will also include a description of the condition of the natural and cultural resources in the park and the condition (capability) of the park's infrastructure in meeting long-term goals. Managers will consider how the park mission and long-term goals might be pursued in the foreseeable future, and the answers to that question will determine the park's workload, budget, and staffing allocations for the next two to five years.

3.3.2.4. Park strategic plans need to contain all of the components required by the Government Performance and Results Act, including a description of the operational processes and resources required to meet the goals, an identification of key factors external to the park and beyond its control that could significantly affect the achievement of general goals, a description of program evaluations used in establishing or revising goals, and a record of consultation. Because information in park strategic plans is extracted for compilation into the servicewide strategic plan, these plans need to contain similar information.

3.3.2.5. Ideally, the park strategic plan will tier from the general management plan, building on the GMP mission, mission goals, and management prescriptions included in that plan, and rewriting them to be stated as outcomes, if necessary. This director's order recognizes that many parks lack a current general management plan upon which to base their initial GPRA strategic planning effort. An anticipated result of this new director's order will be a general management planning program that will support all parks in developing and maintaining this foundation for decision making. In the interim, parks will work from the information in their existing plans and identify and fill gaps in their overall planning framework as quickly as feasible.

3.3.2.6. Although it shares some elements in common with a general management plan, a park strategic plan will not be a substitute for a general management plan because it does not reflect the comprehensive resource analysis, consultation, and compliance required for a general management plan. Through strategic planning, park staffs will continuously reevaluate the adequacy of the park's general management plan as a foundation for addressing issues, and they may identify the need for a new or revised general management plan. Should a park decide, through its strategic planning process, that a major shift in direction or emphasis is needed, then the strategic plan will identify the need for a new general management plan or a GMP addendum or amendment. Strategic plans may also identify the need for more detailed implementation plans. General management planning and implementation planning are the appropriate processes for incorporating the requirements of the National Environmental Policy Act and the National Historic Preservation Act to consider impacts on the natural, cultural, and socioeconomic environments.

3.3.3.0. Implementation Planning

3.3.3.1. Implementation planning focuses on how to implement an activity or project needed to achieve a long-term goal. The contents of implementation plans may vary widely, depending upon whether the plan is directing a
specific project (such as a project to reintroduce an extirpated species or to develop a trail) or an ongoing activity (such as maintaining a historic structure, managing fire within a natural system, or setting and maintaining a standard for a quality visitor experience). Developing a plan of action for dealing with a complex and sometimes controversial issue often requires a level of detail and thorough analysis that goes well beyond that which is appropriate at the general management planning or strategic planning levels. (For more information about specific types of implementation plans, see the director's orders and related guidance for each program area.)

3.3.3.2. Implementation planning will generally be deferred until the activity or project under consideration has sufficient priority to indicate that action will be taken within the next two to five years. Therefore, implementation planning will usually tier off one of the long-term goals identified in the park strategic plan, and it will analyze and describe how the long-term goal will be achieved. Deferring implementation planning until the action has been given sufficient priority to anticipate funding in the next two to five years will help ensure that decisions about how to best achieve a certain goal are relevant, timely, and based on current data.

3.3.3.3. Implementation plans for actions with the potential to significantly affect the human environment will require formal analysis of alternatives in compliance with the National Environmental Policy Act and related legislation, including the National Historic Preservation Act. Since many issues involving environmental quality and cultural resources will be resolved through implementation planning rather than general management planning, the NEPA and NHPA section 106 processes begun during general management planning will need to continue as part of implementation planning.

3.3.3.4. Implementation planning for one or more projects or activities may overlap general management planning and strategic planning if it is appropriate for the purposes of planning efficiency or public involvement. However, the decisions needed at the general management planning level and the strategic planning level will precede and direct the more detailed decisions about projects and activities. Major actions or commitments aimed at changing resource conditions or visitor use in a park, and major new development or rehabilitation, will be consistent with an approved general management plan and will be linked to a long-term goal in a current strategic plan. Even if they are conducted simultaneously, the general management plan and implementation plan(s) will be contained in separate documents or separate parts of a single document, because the general management plan needs to remain intact after the implementation plans are out of date and no longer needed for reference.

3.3.4.0. Park Annual Performance Planning and Annual Performance Reporting

3.3.4.1. Each park will prepare annual performance plans articulating annual goals for the upcoming fiscal year and annual performance reports describing the progress made in meeting the annual goals.

3.3.4.2. Annual performance plans will contain the following decision-making elements: (1) annual performance goals (the outcomes expected to be achieved that fiscal year), which are tiered from the park's long-term goals, (2) an annual work plan (inputs and outputs for the fiscal year) that breaks out park activities to achieve the annual goals and includes FTEs and budgets, and (3) linkages to budget formulation and executive budget documents (refer to the program standards for a detailed description of each element). Because they incorporate decisions made through other planning processes, annual plans do not require public involvement.
3.3.4.3. Annual performance reports will consist of two main parts: (1) a report on the progress made toward meeting the last fiscal year’s annual performance plan, and an analysis of the present fiscal year’s annual performance plan. The analysis will identify the continuing goals (carryovers) from the last fiscal year and discuss why the park did not accomplish one or more of its annual goals in the past fiscal year. The park annual performance report will relate to the servicewide annual performance report where applicable in order to aggregate park results at the servicewide level.

3.3.4.4. The development of the annual performance plan and report will be synchronized with NPS budget development. The annual performance report will specifically address park performance affected by budget change. Annual performance reports may also be used as the basis of personnel appraisals. Accountability for results should be within an employee’s ability to affect results.

4.0. Roles, Responsibilities, and Funding

4.1. Park superintendents will be responsible for identifying planning needs, prioritizing planning work as part of unified priority setting for the park, and for securing funding. The superintendent and regional director will be accountable for accomplishing planning projects and for ensuring that they are consistent with all legal mandates, NPS management policy, generally accepted preservation standards and practices, and servicewide direction. The regional director will ensure that the general management plan is prepared in consultation with the associate directors and program managers in the Washington Office and will recommend further consultation with officials in the Department of the Interior on issues that may be of special interest to the secretary. Program managers in the headquarters office will be responsible for formulating and advising on NPS management policy and for managing servicewide program funds to support the planning and information needs of parks in ways that provide the most benefit for the national park system as a whole. The National Leadership Council will approve priorities for servicewide planning program funds. The national program centers and regional support offices will be responsible for completing assigned projects and for providing technical support and consulting services. Refer to table 1 for a complete listing of roles and responsibilities in NPS park planning.

4.2. Project agreements will be developed for each general management planning project and for complex implementation plans. Through these agreements the parties involved in the project, both the client and the provider of the product, will define and agree from the beginning on the scope of the planning project, the information requirements, the products and services to be produced, the roles and responsibilities for production, consultation, and review, and a project schedule, including major milestones. Project agreements will also include a cost estimate that specifies salary costs by contributing office and other costs for travel, contracts, and printing. The cost estimates will be subtotaled according to the major milestones to help determine if the project is starting to significantly exceed the cost estimate during any particular phase. Project agreements for general management plans will be recommended by the superintendent and the principal planning office(s), cleared for policy compliance by the program manager for park planning and special studies, and approved by the regional director. Project agreements for implementation plans will be agreements among the superintendent and the principal planning offices involved.

4.3. Park planning activities will be funded through a variety of sources. The key sources for each kind of planning are identified below:

- General management planning and analysis will be funded primarily through GMP project funds, although salaries of base-funded staff in regions, support offices, and parks are also expected to be a significant source of support for general management planning. GMP funds will not normally be used to collect basic inventory information about natural and cultural resources or visitor use.
- Planning data needs will be scoped in advance of an anticipated start-up to allow for the coordination with resource management and visitor service programs and the completion of an adequate database to support decision making.
- Park strategic planning and annual performance planning and reporting will be funded primarily out of the park operating base.
• Implementation planning will be undertaken using all appropriate and available NPS and non-NPS sources of funds, equipment, services, and personnel. Implementation planning generally will be funded through project funding available for the specific type of project addressed by the plan. If project funds are not available, other sources will be sought. Within the National Park Service this includes park base, regional base, challenge cost-share program, construction project planning, and the volunteers-in-parks program. Outside the National Park Service this includes collaborative projects with other federal agencies, state agencies, local governments, Indian tribes, scientific and educational institutions, and conservation and preservation organizations. Collaborative projects with partners might involve joint funding, sharing personnel and equipment, and providing services at little or no cost to the National Park Service.

4.4. Planning for imminent resource management, visitor services, or construction projects may overlap with general management planning, so long as decisions needed at the general management planning level precede and direct the more detailed decisions about projects and activities. However, only the GMP portion of this decision making will be funded through the GMP program. An exception may be granted for very small historic sites and monuments (a historic home, possibly with grounds, is a good example) if they have no major GMP issues and simple implementation planning needs (costing up to $25,000). For these parks the advantages to the National Park Service of completing implementation planning with GMP funds will be considered in computing the overall cost-effectiveness of the projects.

Table 1: Roles and Responsibilities in NPS Park Planning

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<tr>
<td>Departmental and congressional liaison</td>
<td>Associate director for professional services serves as the principal liaison with the department and Congress on NPS planning projects.</td>
<td>Various servicewide program managers recommend program specific implementation planning policy in coordination with other park planning programs.</td>
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<td>Policy formulation and consultation</td>
<td>Program manager for park planning and special studies recommends GMP planning policy in coordination with other park planning programs and provides general program guidance.</td>
<td>Director of strategic planning, in coordination with the GPRA task force, recommends GPRP planning policy in coordination with other park planning programs.</td>
<td>Various servicewide program managers recommend program specific implementation planning policy in coordination with other park planning programs.</td>
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<td>Program manager for park planning and special studies advises on GMP project agreements for policy consistency.</td>
<td>Director of strategic planning and GPRA task force consult with servicewide program managers on developing the NPS strategic plan, annual performance plan, and annual performance report.</td>
<td>Various servicewide program managers recommend program specific implementation planning policy in coordination with other park planning programs.</td>
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<td>Servicewide program managers advise on GMP draft documents as determined by the project agreement.</td>
<td>National Leadership Council approves the servicewide mission statement, mission goals, long-term goals, and annual goals that will be used by the arks, programs, and central offices in</td>
<td>Various servicewide program managers recommend program specific implementation planning policy in coordination with other park planning programs.</td>
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<td>Budget allocation</td>
<td>Program manager for park planning and special studies manages the GMP planning program (maintains servicewide GMP priority system, recommends allocation of GMP program funds, approves major program changes, and evaluates accomplishments). Associate director for professional services approves annual GMP fund allocation. National Leadership Council approves servicewide priority list and project estimates.</td>
<td>Various servicewide program managers allocate program specific implementation planning funds to the field offices to accomplish servicewide program priorities. Funds may be allocated on a project-by-project basis or as discretionary funds to the regional director, depending on the funding source.</td>
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| Regional Directors | | |

| Budget allocation | Propose and advance major program changes to the Washington Office. Allocate discretionary GMP funds. | Provide linkages from the annual performance plan to budget formulation. Allocate discretionary implementation planning funds to the field. |

| Plan approval (policy accountability) | Approve GMP project agreements. Approve GMPs, certifying (based on appropriate consultations) that they are consistent with legal requirements, policy, and national direction. | Approve park strategic plans. |

| Park Managers | Define planning needs. | Define planning needs. |

| Plan initiation | Actively participate in all GMP planning activities and assign staff as planning team members. | Actively participate in all park strategic planning activities and assign staff as planning team members. |

| Plan execution | Recommend approval of GMP project agreements and GMPs, recommending (based on appropriate consultations) that they are consistent with legal requirements, policy, and national direction. | Recommend approval of park strategic plans. |

| Plan approval (policy accountability) | | |

<p>| Support Offices | | |</p>
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<th>Plan initiation</th>
<th>Plan execution</th>
<th>Denver Service Center</th>
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<td>Are engaged on a clusterwide basis to compile, concur in, and submit GMP priorities.</td>
<td>Prepare multiyear project agreements.</td>
<td>Prepare multiyear GMP project agreements.</td>
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<td>Execute assigned program in accordance with approved project agreements.</td>
<td>Provide team members and technical plan review as requested by parks.</td>
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<td>Provide team members and technical plan review as requested by parks.</td>
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------------------ end of Director's Order ------------------
Memorandum

To: Directorate, Field Directorate and Park Superintendents

From: Director /s/ Robert Stanton

Subject: Director’s Order #12: Conservation Planning, Environmental Impact Analysis, and Decision-making

I am pleased to send you Director’s Order #12: Conservation Planning, Environmental Impact Analysis, and Decision-making and its accompanying Handbook. Together, these documents set forth the policy and procedures by which the National Park Service carries out its responsibilities under the National Environmental Policy Act (NEPA). NEPA and the National Park Service Organic Act are recognized as the two pieces of "landmark" environmental legislation passed by Congress. The provisions of NEPA also supply the Service with a powerful tool we can use to accomplish our mission of protecting this country's parks for future generations.

Director’s Order #12 and the Handbook lay the groundwork for a necessary evolution in the way we approach environmental analysis, public involvement, and making resource-based decisions. They set forth a new direction in using interdisciplinary teams, incorporating scientific and technical information, and establishing a solid administrative record for our actions.

Recent court challenges have stopped or redirected some of the Service’s actions and decisions. Court decisions are generally based on the adequacy of environmental analysis under NEPA, and the accompanying administrative record. Common themes seen in the court decisions indicate defects in the NPS decision-making process. The courts have cited a lack of, or failure to incorporate, critical information in decisions. In some cases, there has been a basic disregard of laws, regulations, and policies designed to foster resource preservation and conservation. Because of this, I asked a subcommittee of the National Leadership Council to recommend actions to be taken to address these issues. These recommendations, as well as others, are incorporated in the Director’s Order and Handbook. They include:

- Use of interdisciplinary approaches and principles in decision-making;
- Decisions based on technical and scientific information;
- Establishment of benchmarks demonstrating best management processes (such as resource councils and project review teams) in development, analysis, and review of projects;
- Use of alternative dispute resolution and other processes to resolve internal and external disputes;
- Peer review panels to address conflicts among resource specialists regarding validity and interpretation of data and resource information;
- Analysis of impairment to resources as part of the environmental impact analysis process; and
- Post-litigation review and analysis of decision-making for potential improvements to resource-based decisions.

To assist in the implementation of the Director’s Order, I am directing the Associate Director, Natural Resource Stewardship and Science to re-direct resources and seek additional funding so that the Environmental Quality Division can provide increased technical assistance to parks and regions according to the general model adopted by other Natural Resource Program Center Divisions. Service-wide funding proposals should also be developed so that parks, system support offices and regions have adequate resources to implement the order. Lastly, an advisory group made up of regional environmental coordinators, and others from parks, regions, and SSOs should also be established to provide recommendations on improvement of methods and processes used in
environmental impact analysis and policy implementation.

No amount of policy, guidance, or oversight will be successful unless we make a personal commitment to affirmatively fulfill these responsibilities. Our world and our jobs are more complicated now than in any time in history. With this and other issues we must achieve a level of excellence that others will emulate in exercising our resource stewardship responsibilities.

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National Park Service

DIRECTOR'S ORDER #12: CONSERVATION PLANNING AND ENVIRONMENTAL IMPACT ANALYSIS, AND DECISION-MAKING

Approved: /s/ Robert Stanton
Director, National Park Service

Effective Date: January 8, 2001

Sunset Date: January 8, 2005

NPS-12, "NEPA Compliance," is superseded and replaced by this Director's Order and Handbook 12.

Contents:

I. Background
II. Purpose and Scope
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IV. Instructions, Requirements, and Policies
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   2. Director's Order and Handbook
   3. Full and Open Evaluation
   4. Technical and Scientific Analysis
   5. Unknown or Uncertain Impacts
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   8. Records of Decision
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3. Regional Directors
4. Park Superintendents
5. WASO Environmental Quality Division
6. Park Resource Specialists
7. Project Managers and Contracting Officers

I. Background

The National Environmental Policy Act of 1969 (NEPA), as amended, is landmark environmental protection legislation establishing as a goal for federal decision-making a balance between use and preservation of natural and cultural resources. NEPA requires all federal agencies to: (1) prepare in-depth studies of the impacts of and alternatives to proposed "major federal actions"; (2) use the information contained in such studies in deciding whether to proceed with the actions; and (3) diligently attempt to involve the interested and affected public before any decision affecting the environment is made. The 1916 National Park Service Organic Act directs the National Park Service to "conserve the scenery and the natural and historic objects and the wild life therein and to provide for the enjoyment of the same in such manner and by such means as will leave them unimpaired for the enjoyment of future generations." (16 USC 1)

Read together, the provisions of NEPA and the National Park Service Organic Act are consonant and jointly commit the Service to make informed decisions that perpetuate the conservation and protection of park resources unimpaired for the benefit and enjoyment of future generations. Planning, environmental evaluation and public involvement in management actions that may affect national park system resources are essential in carrying out the trust responsibilities of the National Park Service (NPS). Particularly in this era of heightened environmental concern, it is essential that NPS management decisions (1) be scientifically informed, and (2) insist on resource preservation as the highest of many worthy priorities.

II. Purpose and Scope

The purpose of this Director's Order is to set forth the policy and procedures by which the NPS will comply with NEPA.

The Council on Environmental Quality (CEQ), part of the Executive Office of the President, is the "caretaker" of NEPA. The NPS will abide by all CEO NEPA regulations (40 CFR 1500-1508) and any other procedures and requirements imposed by other higher authorities, such as the Department of the Interior (DOI). This Director's Order is not intended, however, to document all those procedures and requirements; for a comprehensive compilation, employees must refer to Handbook 12.

III. Authority

Authority to issue this Director's Order is contained in the NPS Organic Act (16 U.S.C. 1 et seq.), and in delegations of authority found in Part 245 of the DOI Manual (DM). Other specific authorities and requirements governing NPS conservation planning and environmental impact analysis are found in NEPA (42 U.S.C. 4321 et seq.,); 40 C.F.R. 1500-1508; Executive Order 11514 as amended by Executive Order 11991; and the National Parks Omnibus Management Act of 1998 (NPOMA) (16 U.S.C. 5901 et seq.).

IV. Instructions, Requirements, and Policies

4.1 Sources of NEPA Guidance. The NPS will comply with the substantive and procedural requirements of NEPA, 40 CFR 1500-1508, 516 DM, and any additional NPS procedures or instructions regarding NEPA.

4.2 Director's Order and Handbook. References in NPS Management Policies to public involvement, alternative analysis, and environmental evaluation of NPS and other government actions
on resources administered by the NPS are supplemented by this Director's Order and Handbook 12. The Associate Director for Natural Resources Stewardship and Science will develop and issue Handbook 12, containing uniform Servicewide implementing procedures and such supplemental material as may be necessary to carry out NPS responsibilities under NEPA and related statutes. Where other directives and guidelines appear to differ from this Director's Order and Handbook in the areas of impact analysis and other responsibilities under the National Environmental Policy Act, this Director's Order and Handbook take precedence.

4.3 Full and Open Evaluation. The procedures contained in Handbook 12 will ensure that environmental costs and benefits of NPS proposed actions are fully and openly evaluated before actions are taken that may impact the human environment. This evaluation must include provisions for:

- Meaningful participation by the public and other stakeholders;
- Development and critical evaluation of alternative courses of action;
- Rigorous application of scientific and technical information in the planning, evaluation and decision-making processes;
- Use of NPS knowledge and expertise through interdisciplinary teams and processes; and
- Aggressive incorporation of mitigation measures, pollution prevention techniques and other principles of sustainable park management in all actions.

4.4 Technical and Scientific Analysis. Pursuant to the NPOMA and NEPA, NPS management decisions will be based on ample technical and scientific studies properly considered and appropriate to the decisions made. In making decisions, the NPS will articulate a reasoned connection between technical and scientific information and the final agency action. Technical and scientific analyses on potential impacts that are essential in making a well-reasoned decision will be obtained even though such information may not be readily available. If such information cannot be obtained due to excessive cost or technical impossibility, the proposed alternative for decision will be modified to eliminate the action causing the unknown or uncertain impact or other alternatives will be selected.

4.5 Unknown or Uncertain Impacts. When it is not possible to modify alternatives to eliminate an activity with unknown or uncertain potential impacts, and such information is essential to making a well-reasoned decision, the NPS will follow the provisions of the regulations of the Council on Environmental Quality (40 CFR 1502.22). The NPS will state in the environmental document that: (1) such information is incomplete or unavailable; (2) the relevance of the incomplete or unavailable information to evaluating reasonably foreseeable significant adverse impacts on the human environment; (3) a summary of existing credible scientific evidence which is relevant to evaluating the reasonably foreseeable significant adverse impacts on the human environment; and (4) an evaluation of such impacts based upon theoretical approaches or research methods generally accepted in the scientific community. Reasonably foreseeable impacts — including impacts that have catastrophic consequences — will be included, even if their probability of occurrence is low, if such analysis (1) is supported by credible scientific evidence, (2) is not based on pure conjecture, and (3) is within the rule of reason. Scoping processes will be used to help determine data needs.

4.6 The Administrative Record. Where an action undertaken by the NPS may cause an adverse effect on park resources, an adequate and public administrative record must reflect the manner in which park unit resource studies have been considered, alternatives examined, mitigations incorporated, and final decisions reached.

4.7 Prohibition on Impairment. In managing units of the national park system, the Service may undertake actions that have both beneficial and adverse impacts on park resources and values. However, by the provisions of the laws governing the NPS, the Service is prohibited from taking or authorizing any action that would, or is likely to, impair park resources or values. In addition, under other environmental laws, adverse impacts may be prohibited as well. Impacts that may constitute an impairment of park resources or values will be evaluated and described in impact analysis contained within environmental documents produced by the Service.
4.8 Records of Decision. Decisions described in Findings of No Significant Impact and Records of Decision will record information as required by the Council on Environmental Quality and by NPS policies and practices described in the handbook accompanying this order. In addition, such documents will summarize impacts, and whether or not such impacts may constitute an impairment of park resources or values using any criteria established under NPS Management Policies and best professional judgment.

4.9 Peer Review. Peer review will be used to address conflicts among resource specialists regarding validity and interpretation of data and resource information. When conflicting information and opinions concerning resource impacts exists, managers must resolve such disputes. Peer review and similar mechanisms will be used as a primary method for resolution of such conflicts. These processes will be reflected in the administrative record.

4.10 Alternative Dispute Resolution. In order to reduce the potential for litigation, relationships with established alternative dispute resolution providers and scientific professional societies will be established and used within the NEPA process to provide a vehicle for resolution of internal and external disputes. In those instances where the NPS has been sued successfully under NEPA, or advised by the Department of Justice or the Office of the Solicitor to settle litigation, a review and evaluation of the process will be conducted so that corrections can be made to improve our project planning, evaluation and decision-making processes. (See also Director’s Order #93: Conflict Resolution.)

4.11 Interdisciplinary Approach Required. Laws, regulations, and policies applicable to the NPS require interdisciplinary approaches to problem-solving and decision-making. NPS decisions need to reflect this approach as the standard for management within all units. Both present and new NPS managers must consistently apply the principles of interdisciplinary decision-making in order to achieve our goals as resource stewards and "environmental leaders." Benchmarks demonstrating best management processes in development, analysis, and review of projects (such as resource councils and project review teams) will be established for use by parks and regions.

4.12 Evaluating Proposals by Others. The NPS will participate in the early and candid evaluation of proposals by other governments or private entities to avoid adverse environmental impacts to NPS units or other park or recreation resources subject to the provisions of federal law. This is an essential element of effective NPS stewardship. When participating in the environmental impact analysis processes of other entities, the Associate Director for Natural Resources Stewardship and Science will ensure that the NPS's responsibilities for commenting are clearly defined and that the Service and its personnel work with federal, tribal, state and local governments in identifying and evaluating potential impacts to resources under NPS jurisdiction or within areas of NPS expertise. Examples include, but are not limited to:

- Consultation under provisions of Section 4(f) of the Department of Transportation Act;
- Evaluation of noise, visual, or other impacts to national park system resources resulting from external activities;
- Hydropower relicensing projects through FERC procedures
- Impacts of proposed projects on non-NPS areas that have benefited from NPS administered partnership programs (e.g. Land and Water Conservation Fund, Rivers and Trails, National Natural Landmarks, National Register Properties, etc.).
- Analysis of cumulative ecosystem or other impacts upon the integrity of NPS-administered resources; and
- The impacts of any federal activity on other park resources.

Further, other agencies or project proponents will receive responsive and professional evaluation of the potential impacts of their proposals and whether such impacts may result in the derogation of national park system resources or values, or the derogation of other park and recreation resources subject to the provisions of federal law. The purpose of these efforts will be to assist other agencies in avoiding or successfully mitigating impacts to resources and values of NPS units, or on NPS programs administered under other statutory or administrative authorities.
V. Responsibilities

5.1 The Director is ultimately responsible for NEPA planning for all NPS activities. The Director retains signature and approval authority for programmatic environmental impact statements for proposals of nationwide application. While regional directors are delegated authority to approve other types of park-specific EISs, the Director may assume signature authority for any EIS that is unusually controversial or that involves major policy issues.

5.2 The Associate Director for Natural Resources Stewardship and Science will work cooperatively with other associate directors, regional directors, support offices, superintendents and field personnel to ensure that training, technical assistance, and other resources are available and fully used to implement the legal, regulatory, and policy requirements of this order.

5.3 Regional directors are responsible to the Director for integrating the NEPA process into all regional activities and for NEPA planning in their regions. Regional directors are delegated the authority to approve most park-specific EISs for public review, and are responsible for approval of environmental assessments for public review. Only regional directors may sign a Finding of No Significant Impact (FONSI) or Record of Decision (ROD). Regional directors also accept or reject requests for the NPS to be a cooperating or joint lead agency on another agency’s environmental documents.

Regional directors should designate a regional environmental coordinator or similar position for their particular region. Subject to the direction of the regional director, regional environmental coordinators:

- Have functional oversight responsibility for all environmental compliance activities within a given region;
- Usually are the point of contact with the Washington Office, Department of Interior, Office of Environmental Policy and Compliance, and Solicitor’s Office on significant environmental issues;
- Provide policy review for all NPS NEPA documents and coordinate external review for the region; and
- Serve as a resource to other NPS professionals for understanding the various environmental requirements under which the Service operates.

Regional directors should also designate an associate regional director to serve as a contact for the peer review and alternative dispute resolution processes described in paragraphs 4.9 and 4.10, above.

5.4 Park superintendents are responsible for day-to-day implementation of conservation planning and impact analysis activities related to parks under their administration. They must:

- Assure that within-park actions have been adequately analyzed, an adequate range of alternatives considered, and the public and other agencies appropriately involved;
- Assure that ample resource information appropriate to a decision is available, and the technical and scientific studies appropriate to analyze proposed actions are conducted;
- Assure that resource conflicts and allocations are adequately resolved before projects are implemented;
- Recommend Environmental Assessments, Environmental Impact Statements, RODs and FONSI for approval by the regional director;
- Assure that all actions approved under a FONSI or ROD are implemented;
- Designate a park resource specialist to serve as coordinator for NEPA and related impact analysis activities;
- Assure that mitigation measures are included in projects once they are approved; and
- Approve actions that fall under established NPS Categorical Exclusions.
5.5 **The WASO Environmental Quality Division**, which is a part of the Natural Resource Program Center and reports to the Associate Director for Natural Resources Stewardship and Science, will:

- Serve as the focal point for all matters relating to NEPA planning and other related environmental mandates;
- Provide technical assistance to parks and regions;
- Provide project management and coordination on nationally significant environmental impact analysis issues and proposals;
- Coordinate NPS review of NEPA and other documents prepared by other agencies; and
- Provide policy review and clearance for NPS Environmental Impact Statements, as requested.

The Environmental Quality Division may provide policy review and clearance for NPS EISs on a case by case basis, depending on the level of controversy or policy issues involved in the proposed action. Information concerning NPS NEPA documents or the NEPA process can be obtained by contacting this office.

5.6 **Park resource specialists** are responsible for:

- Having knowledge of existing technical and scientific information on park resources and the quality of such information;
- Identifying additional resource information needs and technical and scientific studies necessary to ensure that ample resource information appropriate to analyze proposed actions is available;
- Serving as park NEPA coordinator to facilitate conservation planning and impact analysis;
- Having knowledge of impact analysis processes and procedures;
- Working with the park superintendent and other park staff to assure consideration of potential resource impacts in park proposals; and
- Working with contracting officers in parks, regions, and the Washington Office to ensure that mitigating measures identified in environmental documents are included in the subsequent contract documents implementing projects.

5.7 **Project Managers and Contracting Officers** are responsible for working with park staff to assure that mitigating measures and other items identified in environmental documents to provide for resource protection are included in the subsequent documents implementing projects.

------------- end of Director's Order -------------
DIRECTOR'S ORDER #28: CULTURAL RESOURCE MANAGEMENT

Approved: /s/ Robert Stanton (original on file)
Director, National Park Service

Effective Date: June 11, 1998

Sunset Date: June 11, 2002

NPS-28, Cultural Resource Management Guideline (Release 4, 07-94) and other conflicting instructions are superseded and replaced by this Director's Order. The NPS Management Policies states the basic principles governing the management of cultural resources and is supplemented by this Director's Order.

1. BACKGROUND

1.1 The National Park Service, as steward of many of America's most important cultural resources, is charged to preserve them for the enjoyment of present and future generations. Management decisions and activities throughout the National Park System must reflect awareness of the irreplaceable nature of these resources.

2. AUTHORITY

2.1 This Director's Order is issued pursuant to 16 U.S.C. (1 through 4). Numerous additional legal mandates including P.L. 59-209, P.L. 74-292, P.L. 89-665, P.L. 93-291, P.L 96-95, and P.L. 101-601, as well as regulations, further support the issuance of this Order.

3. INSTRUCTIONS/REQUIREMENTS

3.1 The NPS will protect and manage cultural resources in its custody through effective research, planning, and stewardship and in accordance with the policies and principles contained in the NPS Management Policies.

3.2 The NPS will comply with the substantive and procedural requirements described in the Secretary of the Interior's Standards and Guidelines for Archeology and Historic Preservation. Additionally, the NPS will comply with the 1995 Servicewide Programmatic Agreement with the Advisory Council on Historic Preservation and the National Conference of State Historic Preservation Officers.

3.3 The Associate Director, Cultural Resource Stewardship and Partnerships will develop and issue by December 31, 1999, a cultural resource management handbook to further implement the NPS Management Policies. It will contain park management standards and other requirements, consistent with Federal law and regulation, with which park managers must comply in carrying out their responsibilities. The handbook will be a fundamental basis for managing cultural resources in the National Park System. It will be revised periodically with full consultation from other NPS program managers. In the time period between the issuance of this Director's Order and the issuance of the handbook, Release No. 5 of the Cultural Resource Management Guideline (1997) will provide the necessary interim guidance.
3.4 The handbook referenced in 3.3 above will address standards and requirements for research, planning, and stewardship of cultural resources as well as the following key program activities:

* management of archaeological resources
* management of cultural landscapes
* management of historic and prehistoric structures
* management of museum objects
* management of ethnographic resources

------------------ end of Director's Order ------------------