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**HISTORIC PRESERVATION PROGRAM:  
STRUCTURE, HISTORY, AND CONGRESSIONAL POLICIES**

**Malcolm M. Simmons  
Specialist in Natural Resources  
Environment and Natural Resources Policy Division  
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## ABSTRACT

This report reviews the current historic preservation partnership between the Federal/State/local governmental sectors, and the private sector; the partnership evolution from 1906 through 1976; the historic preservation legislation of the 95th through 99th Congresses; the congressional jurisdiction for historic preservation in the 100th Congress; and historic preservation issues which may be debated in the 100th Congress.

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HISTORIC PRESERVATION PROGRAM:  
STRUCTURE, HISTORY, AND CONGRESSIONAL POLICIES

This report reviews the congressional developments of the past ten years in the area of historic preservation, in particular the definition of the historic preservation partnership between the Federal, State, and local government sectors, and the private sector. During the first part of this ten-year period--from 1977 through 1981--the partnership was strengthened by various legislative enactments and increased funding, while the period from 1982 to the present was characterized by congressional efforts to maintain this partnership as well as funding for it.

The partnership is typified by a web of intergovernmental and private relationships which have been evolving since the beginning of the preservation movement in 1906 (marked by the passage of the National Antiquities Act), and which continues to evolve today.

The report is divided into five parts. The first describes the current partnership, and focuses on the Federal role, the most important Federal agencies involved in this Federal role, the Historic Preservation Fund from which Congress appropriates monies for intergovernmental responsibilities, the State role, the local role, and the private role. The second part discusses the evolution of the partnership, reviewing the period from 1906 through 1966, the National Historic Preservation Act of 1966, and the period 1966 through 1976 after the National Historic Preservation Act. The third part reviews the historic preservation legislation, from 1977 through 1986, of each of the last five Congresses. The fourth part investigates the current congressional jurisdiction for historic preservation, and indicates the primary, secondary, and tertiary committee jurisdiction in this area.

Part five presents the current issues facing the continuing development of the intergovernmental/private partnership, and possible directions for, historic preservation in the 100th Congress. Among the more important issues are decentralization of the historic preservation partnership, review procedures for development of Federal projects affecting historically significant buildings, tax incentives, the future of the Historic Preservation Fund, the participation of Indian tribes in historic preservation, technologies for historic preservation, preservation of church property, and comprehensive historic preservation legislation.

## THE CURRENT PARTNERSHIP

### THE FEDERAL ROLE

The Federal role in historic preservation began in 1906 with the passage of the Antiquities Act,<sup>1</sup> and increased through various legislative enactments<sup>2</sup> through 1966, when it received a major expansion through the passage of the National Historic Preservation Act.<sup>3</sup> This expansion of the Federal role continued until 1981, when various initiatives proposed by the Reagan Administration reduced some of the programs and funding levels of the Federal historic preservation program. This next section provides a brief summary of the most important Federal agencies with historic preservation responsibility, and the Historic Preservation Fund. Later sections review the State, local, and private roles in historic preservation.

### FEDERAL AGENCY RESPONSIBILITY

Section 110 of the National Historic Preservation Act requires Federal agencies to identify any historic properties in their jurisdiction, consider these properties in their planning, and designate agency preservation officers to coordinate agency historic preservation activities.

Beyond this general requirement, which affects many Federal agencies, a number of agencies have specific responsibilities in the development of the historic preservation partnership. Among the most important are the National Park Service, the Advisory Council on Historic Preservation, the Department of Housing and Urban Development, the Farmers Home Administration, the Department of Labor, the Library of Congress, the National Endowment for the Arts, and the Federal Interagency Panel for World Heritage, and the Commission of Fine Arts.

#### National Park Service

The National Park Service (NPS) of the Department of the Interior has a number of programs important for historic preservation. These programs include the National Register of Historic Places, review of tax incentives, the Historic Preservation Fund, National Historic

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<sup>1</sup> Ch. 3060, 59th Congress, 2nd Session; 6 U.S.C. 431-433.

<sup>2</sup> Historic Sites Act of 1935, P.L. 74-292, 16 U.S.C. 461-467; Reservoir Salvage Act of 1960, P.L. 86-523, 16 U.S.C. 469-469(c).

<sup>3</sup> P.L. 89-665; 80 Stat. 915; 36 CFR 60.

Landmarks, historic park sites, the Historic American Buildings Survey, and the Historic American Engineering Record.

National Register of Historic Places One of the most important programs is the maintenance and expansion of the National Register of Historic Places, the cornerstone of the Federal role in historic preservation. The National Register is a listing of historic districts, sites, buildings, and objects which merit some form of Federal recognition. It evolved out of the registry of national landmarks, which was developed pursuant to the Historic Sites Act of 1935.<sup>4</sup> The National Historic Preservation Act of 1966 expanded the scope of the preservation program and, among other things, it created the National Register,<sup>5</sup> and provided criteria for sites which might be included in this listing. The original criterion for inclusion, specified in the 1935 Act, was that a site be nationally significant. The 1966 Act expanded the criterion to include sites of State and local significance. As of April 1986, there were approximately 44,656 entries in the National Register,<sup>6</sup> including approximately 2900 historic districts. An average of approximately 3,500 entries have been added in each of the last four years.

Tax Incentives. The National Park Service plays a key role in reviewing applications for tax incentives, which are granted for expenditures on historic structures. The principal tax incentives, described more fully in other sections of this report, are investment tax credits and facade easements. In the review process, the NPS certifies the historical significance of structures and districts, approves proposed plans for the rehabilitation of certified historic structures, and certifies that the completed rehabilitation meets criteria established by the Interior Department.

Historic Preservation Fund. Another important NPS program is administration of the funds Congress appropriates from the Historic Preservation Fund. Some of these funds go to the States for matching grants, and some go to the National Trust for Historic Preservation for its programs.

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<sup>4</sup> 49 Stat. 666; 16 U.S.C. 461-467; 36 CFR 65.

<sup>5</sup> Before the National Register, a program for collecting drawings and photographs of historic buildings was contained in the Historic American Buildings Survey (HABS). The Library of Congress, in conjunction with the National Park Service, developed this program, which continues today as a program separate from the National Register.

<sup>6</sup> U.S. Department of the Interior, The Secretary of the Interior's 20th Anniversary Report on the National Historic Preservation Act. 1986. p. 16.

National Historic Landmarks. The NPS also administers the National Historic Landmarks program, which recognizes historic places judged to have exceptional value to the Nation. Following announcement of a site's eligibility by the Secretary of the Interior, the owner is invited to apply for Landmark designation. Upon designation, national historic landmarks are entered into the National Register. In 1985 the NPS found that 160 National Historic Landmarks, about 10 percent of the nationwide total, were deteriorated and needed technical and financial assistance to reverse their deteriorated condition. Since no Federal funding was available to carry out this work, and most owners were unable to raise funds on their own, the NPS established with the National Parks Foundation a special donations account to support the preservation of endangered Landmarks.

Historic Park Sites. The NPS also designates places of national historic significance within the National Park System, and classifies such places under various categories. Table 1 contains a listing of the historic classifications, the number in each classification, and the total acreage under each classification. The NPS also conducts archaeological investigations of prehistoric and historic sites located within the National Park System, and contracts with scientific and educational institutions for archaeological investigations at areas of Federal reservoir construction.

Historic American Buildings Survey. Another important program administered by the NPS is the Historic American Buildings Survey (HABS). The program maintains a national archives documenting historic American architecture with measured drawings, photographs and written records. The HABS program is based on a cooperative agreement between the NPS, the Library of Congress, and the American Institute of Architects.

Historic American Engineering Record. The NPS also administers the Historic American Engineering Record (HAER), which is a national archives documenting American engineering achievements with measured drawings, photographs, and written records. The HAER program is based on a cooperative agreement between the NPS, the Library of Congress, and the American Society of Civil Engineers.

TABLE 1. National Park Service Historic Designations, 1985

CLASSIFICATION	NUMBER	ACREAGE
International historic Site	1	35.39
National Battlefield	10	12,249.29
National Battlefield Park	3	8,169.18
National Battlefield Site	1	1.00
National Historic Site	62	17,831.71
National Historical Park	26	150,789.91
National Military Park	10	34,550.67
National Monument	77	4,724,442.40
White House	1	18.07
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TOTAL	191	4,948,087.62

Source: U.S. Department of the Interior, National Park Service, Office of Public Affairs and the Division of Publications (U.S. Dept. of the Interior, 1985). Page 13. The acreages are as of September 30, 1985.

#### Advisory Council on Historic Preservation

The Advisory Council evaluates the impacts of Federal actions on properties of historical, architectural, archaeological, and cultural significance. Section 106 of the National Historic Preservation Act established a process<sup>7</sup> to protect historic properties from unnecessary harm caused by Federal action. The process is commonly known as "section 106 review". Protection responsibilities are assigned to all Federal agencies.

The agency at the center of this review process is the Advisory Council on Historic Preservation, an independent agency created by Title II of the National Historic Preservation Act. The Council's 19 members include Federal agency heads whose departmental actions regularly affect historic properties, private citizens, historic preservation experts, a governor, a mayor appointed by the President, and representatives of the National Trust for Historic Preservation and the National Conference of State Historic Preservation Officers.

<sup>7</sup> 36 CFR Part 800. "Protection of Historic and Cultural Properties".

Federal agencies must take into account the effect that any of their undertakings might have on historic properties, and must give the Advisory Council an opportunity to comment. Properties receiving protection through the section 106 review are those listed in the National Register, as well as to those which are not listed, but which the Secretary of the Interior determines to be eligible for listing. The process includes steps for identifying historic properties, determining the effect of the agency's proposed action on the historic properties, and, if there is an adverse effect, an opportunity for drawing up a Memorandum of Agreement (MOA) between the agency, the Council, and the State Historic Preservation Officer about ways to avoid or mitigate that harm. However, it should be noted that in many situations where it is perceived that an adverse effect may result from a Federal agency undertaking, the problem is resolved without the need for an MOA, through such means as conflict mediation.

#### Department of Housing and Urban Development

The Department of Housing and Urban Development (HUD) provides a variety of programs which can provide assistance in the rehabilitation of historic properties. Such programs include the Community Development Block Grant (CDBG), Urban Development Action Grant (UDAG), Rental Rehabilitation Grant, and Housing Development Action Grant programs.

The CDBG program <sup>8</sup> provides grants to States, cities and other units of local government for eligible activities which are part of a community development program. Among the eligible activities are acquisition and restoration of historically and architecturally significant property.

The UDAG program <sup>9</sup> makes grants to distressed cities and urban counties, and non-distressed cities containing pockets of poverty, to alleviate economic deterioration. These grants may be used for the rehabilitation of historic buildings for industrial, commercial, and mixed uses.

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<sup>8</sup> Authorized by Housing and Community Development Act of 1974, 12 U.S.C. 1706(e); 24 CFR 590.

<sup>9</sup> Authorized by Title I of the Housing and Community Development Act (HCDA) of 1974, P.L. 98-383, 42 U.S.C. 5301-5317, 24 CFR 207, 570, 571; as amended by Title I of the HCDA of 1977, section 10, P.L. 95-128, 42 U.S.C. 5304, 24 CFR 58; as amended by Title I of the HCDA of 1979, P.L. 96-153, 24 CFR various parts; as amended by the HCDA of 1980, P.L. 96-399, 24 CFR 4100; as amended by the Budget Reconciliation Act of 1981, P.L. 97-35 (7 CFR 246, 250,800, 16 CFR 1205, 20 CFR 404,416, 38 CFR 21, 43 CFR 3000,3100, 3110, 45 CFR 96, 49 CFR 670).

HUD's Rental Rehabilitation Grant program, sometimes known as the "section 8" program, <sup>10</sup> provides rental assistance payments to owners who agree to rehabilitate privately owned, primarily residential property, in which some or all of the units will be available for occupancy by lower-income tenants. The property owners must agree to rent the units to low-income persons at HUD-established fair rental rates. Some of the rehabilitated units may be historically significant properties. A related program, <sup>11</sup> which must be coordinated with the section 8 program, provides loans to private nonprofit organizations to finance rehabilitation of housing for the elderly or handicapped.

HUD's "section 235" program <sup>12</sup> assists lower-income families in becoming homeowners. Preference is to be given to low-income families who, without such assistance, would be likely to be involuntarily displaced. On behalf of the low-income home buyer, HUD makes monthly payments to lending institutions to reduce homeowner payments to a level as low as the level that would be required on a five percent interest rate loan. The buyer must contribute at least 20 percent of the adjusted family annual income to the monthly payment due under the mortgage for principal, interest, taxes, insurance, and mortgage insurance premium. This program could be used to improve deteriorated historic urban areas while allowing many lower-income families to remain.

HUD is authorized <sup>13</sup> to insure financial institutions against losses which they may sustain as a result of loans or advances of credit made prior to May 21, 1983 for the purpose of financing the preservation of historic structures.

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<sup>10</sup> Authorized by amendments made by the Housing and Community Development Act of 1974 to the Housing Act of 1937, 42 U.S.C. 1437(f), 24 CFR 215,236,290,811,813,880-884,886,888.

<sup>11</sup> Authorized by section 202 of the Housing Act 1959, as amended. 12 U.S.C. 1701(q), 24 CFR 1,2,277,885 and 29 CFR 1 & 5.

<sup>12</sup> Authorized by section 235 of the National Housing Act, as amended. 12 U.S.C. 1715(z), 24 CFR 203,232,235,251,255.

<sup>13</sup> Title 1 of the National Housing Act of 1934; 12 U.S.C. 1703; 24 CFR 100,200-202a,203,234.

Farmers Home Administration

The Housing Grant Program of the Agriculture Department's Farmers Home Administration (FmHA) provides loans through its "502"<sup>14</sup> and "504"<sup>15</sup> programs to assist very low and low-income families in the purchase and rehabilitation of housing in rural areas. Eligible applicants could use these programs to purchase older buildings in historic areas and making them once again livable.

Internal Revenue Service

The Internal Revenue Service (IRS) is responsible for assuring that taxpayers comply with the tax provisions on the investment tax credits for qualified expenditures used to rehabilitate certified structures, and 40- and 30-year old buildings. The IRS is also responsible for compliance with charitable deductions for donated facade easements.<sup>16</sup> Individuals and corporations claimed \$3.55 million as qualified rehabilitation expenditures in 1983, and \$2.56 million in 1982.<sup>17</sup> Since 1983, the National Park Service has assisted the IRS in these efforts by providing copies of approved and denied historic preservation applications for certified historic structures.

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<sup>14</sup> Authorized by Title V of the Housing Act of 1949, section 502, as amended, 42 U.S.C. 1471, et seq, 7 CFR 2003; P.L. 89-117; P.L. 92-310; 42 U.S.C. 1480, 7 CFR 1804,1806-1809,1822,1823,1841,1863-1864,1866,1872, 1890t,1900-1902,1910,1922,1924,1927,1930,1933; 42 U.S.C. 1472, 7 CFR 1807, 1822; and P.L. 98-51.

<sup>15</sup> Authorized by Title V of the Housing Act of 1949, section 504, as amended; P.L. 89-117, P.L. 89-754, and P.L. 92-310; 42 U.S.C. 1474.

<sup>16</sup> An easement limits or restricts the possessory rights of the owner and is legally enforceable. The easement is a legal document between the property owner and the holder of the easement, and contains obligations that bind the current, as well as future, owners.

<sup>17</sup> U.S. General Accounting Office, Tax Policy and Administration: Historic Preservation Tax Incentives. GAO/ggd-86-112FS. August 1986. page 8.

Federal Highway Administration

Federally assisted highway projects developed under the Federal Highway Administration (FHWA) of the Department of Transportation are required by section 303 of the 1983 Department of Transportation and Motor Carrier Safety Act, <sup>18</sup> to protect historic properties that might be affected by transportation projects.

For federally assisted highway projects, State highway departments are authorized to use a portion of Federal-aid highway funds for such historic and archaeological preservation purposes as employment of salvage authorities, reconnaissance surveys, preliminary site inspections, and excavation and removal of historic objects and/or collection of data about them. The Department of Transportation must give special consideration when a project uses land from a historic site of national, State, or local significance.

Library of Congress

The Library of Congress has custody of a variety of collections critical to preservationists. Of particular interest are the personal papers of most of the U.S. Presidents, as well as both the personal and professional papers of many persons notable in American history, culture, art, architecture, and design. Outstanding examples include the papers of Frederick Law Olmsted and Olmsted Associates, the vast photodocumentary resources of the Prints and Photographs Division, and the comprehensive holdings of the Geography and Map Division, which together provide an unparalleled record of the American landscape and buildings in the nineteenth and early twentieth centuries. The measured drawings, photographs, and historical reports in the Historic American Buildings Survey and the Historic American Engineering Record have proven indispensable to preservationists since the 1930's; many received their training in these documentary programs. Also of interest to preservationists are the activities of the American Folklife Center at the Library of Congress, which preserves intangible elements of our cultural heritage, such as arts, skills, folklife, and folkways.

National Endowment for the Arts

The National Endowment for the Arts makes grants to local governments and public and private non-profit organizations for

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<sup>18</sup> P.L. 97-449; 96 Stat. 2419; 49 U.S.C. 303; 49 CFR 398,1045,1047.

conducting planning and design projects directed at regenerating old neighborhoods. Grants may not cover property acquisition or renovation. The National Endowment makes similar grants for financing research on the design, planning, and use of cultural facilities; for preserving historically and architecturally significant railroad passenger terminals; and projects related to folk arts.

#### Federal Interagency Panel for World Heritage

The Federal Interagency Panel for World Heritage is the principal advisory body to the Secretary of the Interior concerning recommendations for nomination to the World Heritage List. The Interagency Panel was established through the Interior Department's 1982 rules<sup>19</sup> implementing the 1980 amendments (Title IV) to the NHPA, which require the Secretary of the Interior to coordinate United States participation in the International Convention on Cultural and Natural Heritage. These rules also require that the Secretary periodically nominate properties to the World Heritage Committee. As of April 1986, 14 United States properties had been designated World Heritage Sites for the World Heritage List.

#### Commission of Fine Arts

The Commission advises the President, Congress, and government agencies on art and design matters related to the appearance of Washington, D.C. The Commission reviews designs for public works by the Federal or District Governments; plans for public buildings, statues, fountains, monuments, and improvements to public buildings and parks; and private construction plans which may affect certain areas and properties in the District of Columbia.

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<sup>19</sup> 36 CFR Part 73. Final rules published in 1982.

HISTORIC PRESERVATION FUND

The Historic Preservation Fund was established in 1976<sup>20</sup> as a method to provide a continuing source of funding for historic preservation grants to the States and the National Trust for Historic Preservation. It grew out of the small grants-in-aid program authorized by the 1966 Act.

The Historic Preservation Fund is financed through a portion of bonus, royalty, and rent revenues from the Outer Continental Shelf oil and gas leasing and development. The money that Congress then appropriates from the Fund is used for funding of matching grants to the States and the National Trust for Historic Preservation.

Two types of State grants are funded in this manner: 50 percent State matching grants for historic preservation planning; and 70 percent (Federal share) State grants for the survey and inventory of historic properties. Before 1981, State grants could be used for acquisition and development of historic properties, as well as for planning, survey, and inventory. Since 1981, however, the annual appropriations acts have stipulated that the State grants may no longer be used for acquisition and development; they now may be used only for survey and planning activities.

Table 2 shows the amounts Congress has authorized and appropriated for the Fund since 1977, and the amounts Congress authorized and appropriated for historic preservation purposes from 1967 to 1976, before the Fund was established.

Congress authorized \$24.4 million for the Fund in FY 1977, \$100 million in FY 1978 and FY 1979, and \$150 million for FY 1980 through FY 1987. For most fiscal years, Congress generally has not appropriated the full authorization. Under the Reagan Administration, Congress generally has appropriated only one sixth (approximately \$25 million) of the authorized ceiling. The highest appropriation from the Fund occurred in FY 1979, when Congress appropriated \$60 million.

The yearly difference between the authorization ceiling and the amount appropriated may accumulate in the Fund until appropriated for the purposes of the Fund. Currently this unappropriated balance is over a \$1 billion.<sup>21</sup>

The current authorization for the Historic Preservation Fund expires at the end of FY 1987. Congress may reauthorize the Fund, but

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<sup>20</sup> The Historic Preservation Fund was established through Title II of the Land and Water Conservation Fund Act of 1976 (P.L. 94-422; 90 Stat. 1313; 36 CFR 810) which amended the National Historic Preservation Act of 1966.

<sup>21</sup> See Table 1, difference between subtotal for authorizations and appropriations for FY 1977 through FY 1987.

TABLE 2. AUTHORIZATIONS AND APPROPRIATIONS TO THE HISTORIC PRESERVATION FUND, FISCAL YEARS 1967 THROUGH 1988.

FISCAL YEAR	AUTHORIZATION	APPROPRIATION
1967	\$ 2,000,000	\$ 0
1968	10,000,000	300,000
1969	10,000,000	100,000
1970	10,000,000	969,000
1971	7,000,000	5,980,000
1972	10,000,000	5,980,000
1973	15,000,000	7,505,000
1974	15,600,000	11,505,000
1975	20,000,000	20,000,000
1976	24,400,000	20,000,000
TQ <u>1/</u>	4,750,000	4,750,000
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Subtotal	128,750,000	77,089,000
1977	24,400,000	17,500,000
1978	100,000,000	45,000,000
1979	100,000,000	60,000,000
1980	150,000,000	55,000,000 <u>2/</u>
1981	150,000,000	26,000,000 <u>3/</u>
1982	150,000,000	25,440,000 <u>4/</u>
1983	150,000,000	51,000,000 <u>5/</u>
1984	150,000,000	27,500,000 <u>6/</u>
1985	150,000,000	26,000,000 <u>7/</u>
1986	150,000,000	23,729,000 <u>8/</u>
1987	150,000,000	24,250,000 <u>9/</u>
1988	<u>10/</u>	none yet <u>11/</u>
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Subtotal	1,424,400,000	381,419,000
GRAND TOTAL	1,553,150,000	458,508,000

- 1/ Transition quarter when fiscal year was changed from July 1 through June 30, to October 1 through September 30.
- 2/ Of the \$55 million appropriation, \$10 million was deferred until FY81.
- 3/ \$6.5 million of the original \$32.5 million was rescinded, resulting in an appropriation of \$26 million.
- 4/ The continuing resolution (P.L. 97-51) provided \$3,376,000, which, together with \$21,283,000 (\$19,843,000 original plus \$1,440,000 through the Byrd amendment) provided by the regular allocation (P.L. 97-100), provided \$24,659,000. There was an additional FY82 appropriation of \$781,000, which OMB deferred (through P.L. 97-100) until FY 1983, for a total FY82 appropriation of \$25,440,000.
- 5/ Original appropriation was \$26 million, but the Emergency Jobs Appropriations Act (P.L. 98-8) required "For assistance to States, \$25,000,000 to be derived from the Historic Preservation Fund".
- 6/ Includes \$1 million for the Nachez project.
- 7/ Authorized by FY85 continuing appropriations resolution (P.L. 98-473).
- 8/ Original FY86 appropriation (P.L. 91-190) was \$24,795,000, but after loss of \$878,000 due to Gramm-Rudman-Hollings enactment, adjusted FY86 amount was \$23,729,000.
- 9/ The FY87 continuing resolution (P.L. 99-591) appropriated this amount. \$20,000,000 was for grants to the States, and \$4,250,000 for the National Trust for Historic Preservation.
- 10/ Authorization for the Fund expired at the end of FY87.
- 11/ In the FY88 budget request, the Reagan Administration requested no appropriations be made from the HPF for State grants, and requested a rescission of \$15.0 million for FY87 appropriations from the Fund.

Source: (1) U.S. Department of the Interior, National Park Service, fiscal information transmitted to the Congressional Research Service, April 20, 1982.  
(2) P.L.'s 97-51, 97-100, 98-8, 98-473, 99-100, and 99-591. Also, FY 1988 budget request.  
(3) Telephone communication with NPS officials in Grants Administration Division, at various dates in 1987.

even if it does not, there still remains in the Fund the nearly \$1 billion unappropriated balance. Even if Congress does not enact reauthorization legislation, the unappropriated balance would remain available for appropriation in subsequent fiscal years.

### State Grants

Matching grants stimulate State and local participation in a variety of ways. First, in identifying, evaluating, documenting, and nominating properties for inclusion in the National Register. Second, by encouraging protection of historic properties through preservation planning, technical assistance, and advocacy. Third, in assisting Federal agencies to review projects that they fund or license and which may affect State and local historic resources. Fourth, in reviewing private sector rehabilitation projects involving Federal tax incentives to insure that the construction work complies with the Secretary of the Interior's standards.

### THE STATE ROLE

The role of the States in the historic preservation partnership has been encouraged and enlarged through the system established through the National Historic Preservation Act. Section 101 of the Act required that a Governor designate a State Historic Preservation Officer (SHPO) to administer a State program in accordance with Federal guidelines. The Governor's designation is the condition for a State to receive a Federal historic preservation grant.

Extremely important to the functioning of the SHPO's is adequate funding. Heretofore, much of the funding has come from matching grants; where the Federal portion has come from congressional appropriations from the Historic Preservation Fund, and the non-Federal share has been provided by the States.

The duties of the SHPO's include conducting a Statewide survey, identifying historic properties and nominating them to the National Register, preparing a Statewide historic preservation plan, administering the State grants program, assisting governmental agencies in carrying out section 106 review and other preservation responsibilities, and certifying local government preservation programs. Today there are State programs in place in every State and in six territories.

THE LOCAL ROLE

The 1980 Amendments to the NHPA provided for State certification of local government programs, and offered local governments the opportunity to participate in Federal financial assistance, reviews of nominations to the National Register and of Federal undertakings on historic properties within their jurisdictions. Final regulations<sup>22</sup> which took effect in May 1984, require that approved State historic preservation programs develop, for approval by the Secretary of the Interior, procedures for the certification of local governments and for the transfer of funds by States to Certified Local Governments (CLG's). All States had approved procedures in place by September 1985.<sup>23</sup> A State must pass through at least 10 percent of its annual allocation from the Historic Preservation Fund to CLG's.

To be certified, a local government must enforce appropriate State and local legislation for the designation and protection of historic properties, establish and maintain a qualified review commission, maintain a system for the survey and inventory of historic properties, provide for adequate public participation in its activities (including the process for recommending properties for nomination to the National Register), and perform other functions delegated to it by the SHPO. As of December 1986, 257 local governments had been certified nationwide.

The October 1986 revisions<sup>24</sup> to the section 106 review process provide that a CLG may be authorized to assume any of the duties of the SHPO, if the SHPO, the Advisory Council, and the concerned local government can develop an agreement to such an authorization.

THE PRIVATE ROLE

The longstanding role of the private sector in the evolving historic preservation partnership has been encouraged further through historic preservation tax incentives. One of the more important pieces of legislation in this regard was the Tax Reform Act of 1976,<sup>25</sup> which established incentives for the preservation and rehabilitation of income-producing properties, and prohibited a tax deduction for the cost of demolition of a historic structure. Further tax incentives were provided through section 315 of the Revenue Act of

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<sup>22</sup> 36 CFR Part 61.

<sup>23</sup> Except the District of Columbia and the Trust Territory of the Pacific Islands, which are exempted from these provisions of the Act because they have no "local governments" as defined in the Act.

<sup>24</sup> 36 CFR 800.1(c)(2)(i), contained in 51 FR 3115, September 2, 1986.

<sup>25</sup> P.L. 94-455; 42 CFR 401.

1978,<sup>26</sup> the Economic Recovery Act of 1981,<sup>27</sup> and section 205 of the Tax Equity and Fiscal Responsibility Act of 1982,<sup>28</sup> and the Deficit Reduction Act of 1984.<sup>29</sup> The GAO has concluded that "tax considerations have played a key role in stimulating private investments in historic preservation."<sup>30</sup> However, the private sector, at the national, State, and local levels, has played a role in historic preservation long before the enactment of historic preservation tax incentives.

At the national level, one of the most important private organizations is the National Trust for Historic Preservation. Established in 1949, this federally chartered, private, non-profit organization has its headquarters office in Washington, D.C., and has seven regional offices. The organization has a membership of 140,000 (including more than 100 corporations), and a staff of 260. While the National Trust receives some Federal funding through the Historic Preservation Fund, it receives most of its funding from private sources. Despite a decline in Federal funding since 1980, the budget for the National Trust has increased because of the increases in private contributions, which have more than offset the decline in Federal funds. The National Trust's current budget (FY 1986) is \$16 million. The National Trust programs include restoration and management of historic estates, renovations of small-town "Main Streets", monetary contributions that help inner city residents preserve their neighborhoods, and the publication of a bi-monthly magazine.

At the State and local level, there are many important private organizations which preserve historic properties and museums and act as advocates for historic preservation.

Universities also play an important part in historic preservation. For many years, universities have offered courses in historic preservation, but it is not until recently that universities have granted undergraduate and graduate degrees<sup>31</sup> in the subject. These university programs develop skills in preservation planning, administration, and historic site interpretation and management.

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<sup>26</sup> P.L. 95-600; 92 Stat. 2763.

<sup>27</sup> P.L. 97-34.

<sup>28</sup> P.L. 98-369.

<sup>29</sup> P.L. 98-369.

<sup>30</sup> U.S. General Accounting Office, Information on Historic Preservation Tax Incentives. GAO GGD-84-47(March 24, 1984). page ii.

<sup>31</sup> Various universities now grant historic preservation degrees. For example, Middle Tennessee State University offered its first undergraduate degree in historic preservation in 1973, its first graduate program in 1974, and its first doctoral degree program in 1981.

## EVOLUTION OF THE PARTNERSHIP: THE FIRST 70 YEARS

This section of the report traces the development of the historic preservation partnership from 1906 through 1976, from its beginnings with the Antiquities Act of 1906, to the end of the 94th Congress. During the first 60 years of this period, the thrust of the historic preservation program was largely Federal in scope. Significant involvement of State and local governmental sectors and private sector involvement would not occur until the last ten years of this period, and would be initiated by passage of the National Historic Preservation Act.

1906 THROUGH 1966

The beginning of the national effort to develop a preservation program began with the enactment of the Antiquities Act of 1906. This legislation gave the President authority to withdraw public lands for the purpose of protecting prehistoric or historic ruins, monuments, and other objects located on Federal property.

Legislation <sup>32</sup> in 1916 created the National Park Service within the Department of the Interior. Authorities granted to the NPS included managing "historic objects" as well as natural areas.

The next important legislation was the Historic Sites Act of 1935. <sup>33</sup> The Act established 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." The Act gave the Interior Department, through the National Park Service, major responsibility for historic preservation. The National Park Service received the authority to survey, document, evaluate, acquire, and preserve archaeological and historical sites throughout the country. Additionally, the statute provided authority for the professional documentation of historic sites and structures by the Historic American Buildings Survey and, subsequently, the Historic American Engineering Record.

A 1949 Act <sup>34</sup> established the National Trust for Historic Preservation, the only private, nonprofit organization chartered by Congress with the

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<sup>32</sup> 64th Congress, 1st; Chapter 408; 39 Stat. 535; 16 U.S.C. 1. An Act to Establish a National Park Service, and for Other Purposes.

<sup>33</sup> 74th Congress, 1st; Ch. 593, para 1; 49 Stat. 666; 16 U.S.C. 461-467.

<sup>34</sup> 81st Congress, 1st Session, Ch. 755; 16 U.S.C. 468.

responsibility for encouraging public participation in the preservation of sites, buildings, and objects significant in American history and culture. The Act established that the National Trust would be under the general direction of a board of trustees.

The first Federal efforts at protecting archaeological and historic relics from possible harm from Federal activities was the enactment of the Reservoir Salvage Act of 1960.<sup>35</sup> This law gave the Secretary of the Interior major responsibility for the preservation of archaeological data that might be lost through Federal dam construction.

#### NATIONAL HISTORIC PRESERVATION ACT

The Act which would prove the cornerstone of the preservation movement, however, was the National Historic Preservation Act of 1966.<sup>36</sup> This law created a unified approach to historic preservation, and provided the basic building blocks for the development of the intergovernmental/private partnership in historic preservation. The Act established the National Register of Historic Places, which lists the buildings worthy of national recognition. The law also established the process (section 106 review) for reviewing Federal undertakings which might affect properties listed in the National Register, and for insuring that listed properties are protected from unnecessary harm caused by those undertakings. The law established the Advisory Council on Historic Preservation to monitor this review process. Finally, the law provided for State grants and State preservation offices, which would be the genesis of the intergovernmental linkage.

#### AFTER NHPA--1966 THROUGH 1976

The ten years after passage of the National Historic Preservation Act were typified both by further expansion of the historic preservation partnership, and "fine-tuning" of existing elements within it.

The National Trails System Act of 1968<sup>37</sup> provided for the study and designation of National Recreation Trails and National Scenic Trails. "National Scenic Trail" was defined to include "nationally significant...historic" trails. In addition to designating the first two components<sup>38</sup> of the

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<sup>35</sup> P.L. 86-523, para. 2; 74 Stat. 220; 16 U.S.C. 469(a).

<sup>36</sup> P.L. 89-665; 80 Stat. 915; 16 U.S.C. 470.

<sup>37</sup> P.L. 90-543; 82 Stat. 919; 16 U.S.C. 1241-1249.

<sup>38</sup> The Appalachian Trail and the Pacific Crest Trail were the first designated components of the National Trails System.

scenic trail system, the Act also authorized the study of 14 additional proposals.<sup>39</sup> The 1976 amendments to the National Trails System Act<sup>40</sup> added eight<sup>41</sup> new trails for study.

The President signed Executive Order No. 11593<sup>42</sup> in 1971, requiring Federal agencies to administer cultural properties under their control and direct their policies, plans, and programs in such a way that federally owned sites, structures, and objects of historical, architectural, or archaeological significance are preserved, restored, and maintained. To achieve this goal, Federal agencies had to inventory and nominate to the National Register all properties under their jurisdiction.

The Archaeological and Historic Preservation Act of 1974<sup>43</sup> expanded the scope of Reservoir Salvage Act of 1960 by extending the notification and salvage requirements to all Federal, Federally assisted, and Federally licensed projects that might cause the loss of significant historical or archaeological data. The Act also provided that up to 1% of the total Federal project cost could be used for recovery of data in such cases.

The Tax Reform Act of 1976<sup>44</sup> had the effect of helping to bring private sector developers into viewing historic structures in need of rehabilitation as viable commercial ventures, rather than merely as candidates for demolition. The legislation established tax incentives for the preservation and rehabilitation of historic commercial and income-producing properties, and prohibited a tax deduction for the cost of demolishing a historic structure; before the 1976 Act, tax laws still permitted taxpayers to deduct demolition costs and remaining depreciation on existing structures to determine taxable income. The 1976 Act provided for a five-year period for the income tax deduction of the costs of rehabilitation expenditures of certified historic structures; before the Act, this deduction period had been 20 to 35 years.

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<sup>39</sup> Continental Divide Trail, Potomac Heritage Trail, Old Cattle Trails of the Southwest, Lewis and Clark Trail, Natchez Trace, North Country Trail, Kittanning Trail, Oregon Trail, Santa Fe Trail, Long Trail, Mormon Trail, Gold Rush Trails, Mormon Battalion Trail, and El Camino Real.

<sup>40</sup> P.L. 94-527; 90 Stat. 2481; 16 U.S.C. 1244.

<sup>41</sup> Bartram Trail, Daniel Boone Trail, Desert Trail, Dominguez-Escalante Trail, Florida Trail, Indian Nations Trail, Nez Perce Trail, and the Pacific Northwest Trail.

<sup>42</sup> 3 C.F.R. 154 (1971), reprinted in 16 U.S.C. 470 note (1982).

<sup>43</sup> P.L. 93-291; 88 Stat. 174, 16 U.S.C. 469 et seq.

<sup>44</sup> P.L. 94-455; 90 Stat. 1420 et seq.

Finally, the 1976 Act defined terms, such as "certified historic structures",<sup>45</sup> "amortizable basis", and "certified rehabilitation", important for determining the structures and repairs eligible for tax benefits.

Also in 1976, Title II of Land and Water Conservation Fund Act<sup>46</sup> established the Historic Preservation Fund. The Historic Preservation Fund would be the key to a continuing source of Federal funding for matching grants to the States and the National Trust for Historic Preservation. This continued source of funding has proven to be a critical factor in the maintenance of the Federal intergovernmental partnership.

Much of the general structure of the national historic preservation program was established by 1976. The next ten years would consolidate this structure, and make further refinements in the program. The next section reviews the historic preservation activities of the five Congresses from 1977 through 1986.

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<sup>45</sup> "Certified historic structure" was defined by the 1976 Act as a structure which is either listed in the National Register; located in a Registered Historic District and is certified by the Secretary of the Interior as being of historic significance to the district; or located in an historic district designated by State or local statute (and where the Secretary of the Interior has certified such statute as "containing criteria which will substantially achieve the purpose of preserving and rehabilitating buildings of historic significance to the district").

<sup>46</sup> P.L. 94-422; 90 Stat. 1319-1323; 16 U.S.C. 470(h).

ACTIVITIES OF THE PAST FIVE CONGRESSES: 1977 TO THE PRESENT

The following is a description of the historic preservation activities which occurred in the last five Congresses. These ten years represent a change in the intergovernmental and private partnership in historic preservation, from one of continued strengthening during the 95th and 96th Congresses until 1981, to post-1981 efforts on the part of the 97th, 98th, and 99th Congresses to counter Administration attempts to change this partnership by limiting preservation funding and changing historic rehabilitation tax incentives.

The continued strengthening of this partnership in the 95th and 96th Congresses was exemplified by the National Historic Preservation Act Amendments of 1980 and the Archaeological Resources Protection Act of 1979. In the 97th Congress, the continued strengthening of the partnership was exemplified by the tax incentives provided in the Economic Recovery Act of 1981 and section 205 of the Tax Equity and Fiscal Responsibility Act of 1982.

The overriding concern in historic preservation during the last three Congresses has been the retention of the national historic preservation programs, and maintenance of reasonable funding levels for these programs. The Administration has proposed scaling back of historic preservation tax incentives, as well as cutting back funding of other existing programs. Of particular concern to preservationists has been the Administration's attempts in the last six years to eliminate funding for the Historic Preservation Fund. Congress has maintained all the existing programs, rejected all rescissions of proposed programs, and accepted only slight cutbacks in their annual appropriations.

95TH CONGRESS (1977-1978)

Major Legislation

One of the important legislative developments of the 95th Congress for historic preservation was contained in the Revenue Act of 1978,<sup>47</sup> enacted through the House Ways and Means Committee and the Senate Finance Committee. Section 315 extended the regular investment tax credit to older buildings for the purpose of promoting stability and economic vitality in deteriorating areas. While no special credit was made available for certified historic structures, the investment tax credit was made available for their rehabilitation if the Secretary of the Interior certified the rehabilitation as

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<sup>47</sup> P.L. 95-600; 92 Stat. 2763.

appropriate. Section 701(f)(1) redefined the term "Certified Historic Structure" (originally set out in section 2124 of the Tax Reform Act of 1976) as a depreciable structure which is either listed in the National Register, or located in a registered historic district and is certified by the Secretary of the Interior as being of historic significance to the district.

National Parks and Recreation Act. The National Parks and Recreation Act of 1978 established a number of new historical sites, made additions to the National Trails System, and extended the authorization for the Advisory Council. Among the new historical sites established were the Edgar Allan Poe National Historical Site in Philadelphia, the Kaloko-honokohau National Historical Park in Hawaii, the Palo Alto Battlefield National Historic Site, the Friendship Hill National Historic Site, the Thomas Stone National Historic Site, the Maggie L. Walker National Historic Site, the Crow Creek Village Archaeological Site, the Theodore Roosevelt Inaugural National Historic Site, the Albert Einstein Memorial, Fort Laramie National Historic Site, Fort Union Trading Post National Historic Site, addition of Dorchester Heights to the Boston National Historical Park, and the Alibates Flint Quarries and Texas Panhandle Pueblo Culture National Monument. The 1978 Act designated 5 new national trails <sup>48</sup> to the National Trails System, established three criteria that a trail must meet to be designated a National Historic Trail, proposed one more trail <sup>49</sup> for study, and required that advisory councils for designated National Trails be established one year after trail designation. The 1978 Act also amended the Reservoir Salvage Act of 1960, <sup>50</sup> authorizing appropriations for FY 1979 through FY 1983.

Other Legislation. The 1978 Amendments to the National Trails System Act <sup>51</sup> established the Advisory Council for the Appalachian National Scenic Trail for a period of ten years. This legislation was initiated in the House Interior and Insular Affairs Committee.

## 96TH CONGRESS (1979-1980)

### Major Legislation

National Historic Preservation Act Amendments. The 96th Congress saw the enactment of the National Historic Preservation Act Amendments of 1980, <sup>52</sup> which were initiated in the House and referred to the Interior and

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<sup>48</sup> Oregon National Historic Trail, Mormon Pioneer National Historic Trail, the Continental Divide National Scenic Trail, the Lewis and Clark National Historic Trail, and the Iditarod National Historic Trail.

<sup>49</sup> Overmountain Victory Trail

<sup>50</sup> P.L. 86-523; 74 Stat. 220; 16 U.S.C. 469(c).

<sup>51</sup> P.L. 95-248; 92 Stat. 159; 16 U.S.C. 1241 and 1244.

<sup>52</sup> P.L. 96-515;

Insular Affairs Committee. The legislation further developed the intragovernmental/private partnership in historic preservation, by increasing the role of States' historic preservation programs, and clarifying Federal agencies' responsibilities for recovering, documenting, and preserving archaeological, historical, or cultural resources.

The legislation provided a clear role for local government in this partnership, through the certification of local government programs. This certification offered local governments the opportunity to participate in Federal financial assistance, reviews of nominations to the National Register and of Federal undertakings on historic properties within their jurisdictions.

The 1980 Amendments reauthorized the Historic Preservation Fund through FY 1987, and authorized \$150 million in yearly appropriations. The legislation also contained authorities for implementing the World Heritage Convention, and established the National Building Museum. Also, the 1980 Amendments required the Secretary of the Interior, in cooperation with the American Folklife Center at the Library of Congress, to develop a report for the President and Congress on preserving and conserving the intangible elements of our cultural heritage. Finally, the 1980 Amendments permitted Federal agencies, in order to insure the preservation of historic property, to lease historic property they own, or exchange certain property they own with certain comparable non-federal historic property.

Other Legislation. The Archaeological Resources Protection Act of 1979<sup>53</sup> was enacted to protect the archaeological resources of public lands and Indian lands. Of particular importance was the protection of these resources from loss and destruction resulting from uncontrolled excavations and pillage. This legislation was initiated in the House Interior and Insular Affairs Committee.

The passage of P.L. 96-244<sup>54</sup> permitted the National Park Service to accept private donations to "acquire, restore, preserve, or recover data from" places listed in the National Register. This law also extended the authorization for appropriations for the Advisory Council on Historic Preservation for three years: the Council could receive up to \$2,500,000 for each of fiscal years 1981, 1982 and 1983. This legislation was initiated in the House Interior and Insular Affairs Committee.

The Seiberling/Wylie amendment to the Housing and Community Development Act of 1980<sup>55</sup> required a review of the impact of urban development action grant (UDAG) projects (sponsored by the Department of Housing and Urban Development) on protected historic properties. UDAG applicants would be required to identify properties in the National Register which would be affected by the project. The appropriate State Historic Preservation Officer and Secretary of the Interior each would have a 45-day period to comment on

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<sup>53</sup> P.L. 96-95; 93 Stat. 721.

<sup>54</sup> 94 Stat. 346. May 18, 1980.

<sup>55</sup> P.L. 96-399; 94 Stat. 1614.

both the impact of the UDAG project on historic properties, and proposed mitigating measures.

1980 Amendments to the Historic Sites, Buildings, and Antiquities Act of 1935<sup>56</sup> established the Georgia O'Keeffe National Historical Site and the Golden Spike National Historic Site. The Act also provided for the commemoration of the life of George Meany, past president of the American Federation of Labor and Congress of Industrial Organizations, by authorizing the investigation of sites associated with his life and work, and authorized the study of the locations and events associated with the historical theme of Man in Space. Finally, the enactment added the Overmountain Victory National Historic Trail to the National Trails system. This legislation was initiated in the Senate Energy and Natural Resources Committee.

The National Center for the Study of Afro-American History and Culture Act of 1980<sup>57</sup> provided for the establishment of the Boston African American National Historic Site. The Act also established a commission which would develop a plan for the construction and operation of a national center for the study of Afro-American history and culture. The headquarters for the commission would be located in Wilberforce, Ohio. This legislation was initiated in the House Committee on Interior and Insular Affairs.

To protect and interpret for future generations the places where Martin Luther King, Jr. lived, worked, worshipped, and was buried, a 1980 enactment<sup>58</sup> established the Martin Luther King National Historic Site and the Martin Luther King, Jr. Preservation District in Georgia. The Act also established an Advisory Commission which would advise the Secretary of the Interior with respect to formulation and execution of plans for the administration of the historic site. This legislation was initiated in the House Interior and Insular Affairs Committee.

To preserve for the benefit, education, and inspiration of present and future generations the church in which John Adams, John Quincy Adams, and Abigail Adams are buried, a 1980 Act<sup>59</sup> authorized the Department of the Interior to accept and administer the Adams National Historic Site in Quincy, Massachusetts. This legislation was initiated in the House Interior and Insular Affairs Committee.

The Frederick Law Olmsted National Historic Site was authorized through Title II of P.L. 96-87.<sup>60</sup> This legislation was initiated in the House Committee on Interior and Insular Affairs.

The 1980 Act for the orderly disposal of certain Federal lands in Nevada, and for the acquisition of certain other lands in the Lake Tahoe

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<sup>56</sup> P.L. 96-344; 94 Stat. 1133.

<sup>57</sup> P.L. 96-430; 16 U.S.C. 461 note.

<sup>58</sup> P.L. 96-428; 16 U.S.C. 461 note.

<sup>59</sup> P.L. 96-435; 94 Stat. 1861.

<sup>60</sup> P.L. 96-87; 93 Stat. 64; 16 U.S.C. 461 note.

Basin, <sup>61</sup> contained a provision which repealed the order of designation of the Mar-A-Lago National Historic Site, and designated the same as the Mar-A-Lago National Historic Landmark. This legislation was initiated in the House Committee on Interior and Insular Affairs.

The Native Hawaiians Study Commission Act of 1980 <sup>62</sup> established the Kalaupapa National Historical Preserve in the State of Hawaii, and established an advisory commission of the same name.

Various enactments designated new additions to the National Scenic Trails: Title I of P.L. 96-199 <sup>63</sup> added the North Country National Scenic Trail, extending from New York to North Dakota; P.L. 96-370 <sup>64</sup> added the Ice Age National Scenic Trail (in Wisconsin), and P.L. 96-344 <sup>65</sup> added the Overlook Victory National Historic Trail. These enactments were initiated by the House Committee on Interior and Insular Affairs.

Congress passed a joint resolution <sup>66</sup> to observe the week of May 6 through May 12, 1979 as "National Historic Preservation Week".

#### 97TH CONGRESS (1981-1982)

##### Major Legislation

Tax Credits. The 97th Congress proved an important one for important tax laws changes for historic preservation. The Economic Recovery Act of 1981 <sup>67</sup> repealed the accelerated rehabilitation cost deduction authorized by the Tax Reform Act of 1976. In its place, the 1981 Act authorized a three-tiered investment tax credit for rehabilitating structures: certified historic structures would receive a 25 percent tax credit; historic structures which are at least 40 years old would receive a 20 percent tax credit; and structures at least 30 years old would receive a 15 percent tax credit. Each of the credits may be used in conjunction with a 15-, 35-, or 45-year cost recovery period for the adjusted basis of the building. These credits would be available only if the taxpayer elected to use the straight-line

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<sup>61</sup> P.L. 96-586; 43 U.S.C. 1701.

<sup>62</sup> P.L. 96-565; 16 U.S.C. 410jj.

<sup>63</sup> P.L. 96-199; 94 Stat. 67; 16 U.S.C. 1244.

<sup>64</sup> P.L. 96-370; 94 Stat. 1360; 16 U.S.C. 1244.

<sup>65</sup> P.L. 96-344; 94 Stat. 1136; 16 U.S.C. 1244.

<sup>66</sup> P.L. 96-13 (S.J.Res. 71); 93 Stat. 28.

<sup>67</sup> P.L. 97-34; 95 Stat. 172, et seq.

method of cost recovery.<sup>68</sup> The legislation was initiated in the House Ways and Means Committee.

Section 205 of the Tax Equity and Fiscal Responsibility Act of 1982<sup>69</sup> amended the Tax Code provisions allowing the investment tax credit for expenses incurred in the certified rehabilitation of certified historic structures. The amendment required the reduction in basis of assets by one-half of the credit for qualified rehabilitation expenditures for certified historic structures. Thus half of the 25 percent investment tax credit would be subtracted from the basis of the building used for depreciation purposes.

Other Legislation. Congress through section 303 of the 1983 Department of Transportation and Motor Carrier Safety Act<sup>70</sup> provisions protecting historic properties from impacts of transportation projects. Section 303 requires that a transportation project may only use land from historic properties only if there are no feasible and prudent alternatives to doing so. If such a project does must use such lands, it must include "all possible planning to minimize harm".

Congress enacted historic site legislation<sup>71</sup> which authorized the Architect of the Capitol to make \$300,000 in grants for a program of restoration and preservation of the Congressional Cemetery in the District of Columbia. The Congressional Cemetery includes areas where John Philip Sousa, Matthew Brady, J. Edgar Hoover, several former Members of the United States Senate and House of Representatives, and many other persons of historical importance and interest are buried. This legislation was initiated by the House Committee on Interior and Insular Affairs.

Congress enacted a number of pieces of historic site legislation initiated by the Senate Committee on Energy and Natural Resources. One such enactment<sup>72</sup> designated the Mary McLeod Bethune Council House (in the District of Columbia) a national historic site. The Council House was the first national headquarters of the National Council of Negro Women, and is the site of the Mary McLeod Bethune Memorial Museum and the National Archives for Black Women's History. Another enactment<sup>73</sup> authorized the Secretary of

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<sup>68</sup> According to the Joint Committee on Taxation (General Explanation of the Economic Recovery Tax Act of 1981, JCS-71-81, p. 114), a taxpayer could still elect accelerated cost recovery percentages for the building shell and straight-line for the rehabilitated portion only if the rehabilitation constitutes a substantial improvement that is treated as a separate building for purposes of electing recovery periods and methods under section 168(f)(1)(C).

<sup>69</sup> P.L. 97-248; 96 Stat. 431; 26 U.S.C. 48.

<sup>70</sup> P.L. 97-449; 96 Stat. 2419; 49 U.S.C. 303.

<sup>71</sup> P.L. 97-245; 96 Stat. 313; 2 U.S.C. 51 note.

<sup>72</sup> P.L. 97-329; 96 Stat. 1615; 16 U.S.C. 461 note.

<sup>73</sup> P.L. 97-374; 96 Stat. 1818.

Agriculture to enter into cooperative agreements to provide for the protection and maintenance of the John Sack cabin, in the Targhee National Forest in Idaho. Still another enactment <sup>74</sup> authorized the Secretary of the Interior to enter into cooperative agreements to assist in the preservation of historic Camden, South Carolina, important in military operations in the South during the American Revolution.

### Historic Preservation Fund

One of the major preservation conflicts in the 97th Congress was over funding of the Historic Preservation Fund. The Carter Administration had requested \$45 million to be appropriated from the Historic Preservation Fund for FY 1981, and Congress then proceeded to appropriate \$32.5 million. The incoming Reagan Administration, however, rescinded \$6.5 million of this congressional appropriation, resulting in a final appropriation for FY 1981 of \$26 million.

For FY 1982, the Reagan Administration requested \$4.6 million for appropriations from the Historic Preservation Fund, which would be used only as a matching grant to the National Trust. No funds were requested for State grants. Congress appropriated \$25.44 million from the Fund for FY 1982, of which \$4.416 million was for the National Trust and \$21.024 million was for the States. The conference report <sup>75</sup> for the FY 1982 appropriations enactment specified that State grants could be used neither for acquisition or development, nor for transfer to local governments. The State grants could be used only for "improving survey and planning systems as the focal point for reducing regulatory problems", and "assisting Federal agencies, and identifying opportunities for private investment."

### 98TH CONGRESS (1983-1984)

#### Major Legislation

The most important legislation of the 98th Congress for historic preservation was that affecting tax incentives. The Deficit Reduction Act of 1984, <sup>76</sup> initiated by the House Ways and Means Committee, provided an alternative test for definition of qualified rehabilitated building, and made

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<sup>74</sup> P.L. 97-184; 96 Stat. 99; 16 U.S.C. 461 note, and 462.

<sup>75</sup> House Report No. 97-315, accompanying H.R. 4035 (enacted as P.L. 97-100), page 13.

<sup>76</sup> P.L. 98-369, sec. 1043 & 1063; 98 Stat. 1044 & 1047; 26 U.S.C. 48 & 280B.

permanent the tax disincentives associated with demolition of Certified Historic Structures. <sup>77</sup>

The second supplemental appropriations enactment <sup>78</sup> contained a provision <sup>79</sup> which repealed the designation of the Georgia O'Keeffe National Historic Site, which had been established in the 96th Congress through the 1980 amendments to the Antiquities Act.

In its 1984 amendments to the National Historic Preservation Act, <sup>80</sup> Congress provided for the reauthorization of appropriations for the Advisory Council on Historic Preservation. The enactment authorized \$2.5 million for each of the fiscal years 1985 through 1989. The House Interior Committee initiated this legislation.

At the request of the Joint Committee on Taxation, the GAO prepared a report <sup>81</sup> on the tax provisions, authorized by the Economic Recovery Tax Act of 1981, relating to the rehabilitation of certified historic structures.

Congress enacted a joint resolution honoring the fiftieth anniversary of the Historic American Buildings Survey, and commending the National Parks Service, the Library of Congress, and the American Institute of Architects on the Survey's past accomplishments. This legislation was initiated by the Senate Committee on Energy and Natural Resources.

#### Historic Preservation Fund

The major preservation conflict in the 98th Congress was over funding. The President requested zero funding for the Historic Preservation Fund for both FY 1983 and FY 1984, yet Congress provided funding at levels similar to previous years' funding. In FY 1983 Congress appropriated \$26 million from the Fund, and later provided another \$25 million through the emergency jobs enactment <sup>82</sup>, for total FY 1983 funding of \$51 million. For FY 1984, Congress provided \$27.5 million for the Fund.

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<sup>77</sup> Section 1063 of P.L. 98-369 expanded the demolition disincentives to "any" structure, not just "certain historic" structures.

<sup>78</sup> P.L. 98-396; 98 Stat. 1386; 16 U.S.C. 461 note.

<sup>79</sup> Senate adopted Domenici amendment (to H.R. 6040) repealing designation of Georgia O'Keeffe National Historic Site.

<sup>80</sup> P.L. 98-483; 98 Stat. 2258; 16 U.S.C. 470(t)a.

<sup>81</sup> U.S. General Accounting Office, Information on Historic Preservation Tax Incentives, GAO/GGD-84-47, March 29, 1984.

<sup>82</sup> P.L. 98-8; 97 Stat. 19; 16 U.S.C. 470.

99th CONGRESS (1985-1986)Historic Preservation Fund

In both the FY 1986 and FY 1987 budget requests, the President requested that no appropriations be made from the Historic Preservation Fund. Nevertheless, Congress appropriated monies from the Fund: \$24.795 million from the Fund for FY 1986 through the FY 1986 continuing resolution (P.L. 99-190); and \$24.25 million for FY 1987 through the FY 1987 continuing resolution (P.L. 99-591).

After the FY 1986 Gramm-Rudman-Hollings (GRH) sequestration of 4.3 percent, the \$24.795 million was reduced to \$23.729 million. Of this amount, \$19.533 million went to State grants, and \$4.196 million to the National Trust. The President also had requested a rescission of 79 percent of the FY 1986 appropriations to the Fund. This rescission request lapsed in mid-April (1986) because Congress took no action to concur.

Since sequestration under the Gramm-Rudman-Hollings budget reconciliation legislation did not occur for FY 1987, the FY 1987 funding level of \$24.25 million was not reduced.

Tax Credits

Both the House Ways and Means Committee and the Senate Finance Committee introduced resolutions (H.Res. 243, S. Res. 209) in the first session which expressed the sense of each House of Congress that if Congress enacts tax reform legislation, it would not eliminate the historic rehabilitation tax credit. These resolutions were in response to the President's first tax reform package which proposed to eliminate the rehabilitation tax credits. In the second session, the Senate Finance Committee and the House Ways and Means Committee each developed its own version of tax reform. Included in the tax debate was whether to retain the rehabilitation tax credits. The legislation enacted (P.L. 99-514) retained <sup>83</sup> these credits, although in a form less beneficial to rehabilitators. Instead of a three-tier rehabilitation credit, there is now a two-tier credit for qualified rehabilitation expenses: 20 percent for rehabilitation of certified historic structures; and 10 percent for the rehabilitation of buildings, other than historic structures, originally placed in service before 1936. Under P.L. 99-514, the depreciation recovery period would be longer: 27.5 years for residential property, and 31.5 years for nonresidential property. Preservationists are

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<sup>83</sup> The Senate version of H.R. 3838 originally contained the tax credits, while the House version did not.

concerned that the "passive-loss" restriction<sup>84</sup> could render the credits useless for many developers.

#### Other Legislation

P.L. 99-445<sup>85</sup> amended the National Trails System Act by designating the Nez Perce Trail, which extends from Oregon to Montana, as a National Historic Trail. This legislation was initiated in the Senate Energy and Natural Resources Committee.

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<sup>84</sup> "Passive-loss" refers to the situation under current law where real estate investors are entitled to deduct the prorated expenses (such as interest, insurance, taxes, and repairs) and depreciation for buildings which they own. The restriction in P.L. 99-514 limits the use of "passive loss" to buildings that are personally managed by the owner. Thus, buildings owned in a real estate limited partnership would not be able to use the "passive-loss" tax benefits. P.L. 99-514 allows a four-year phase-in period for the "passive-loss" restriction.

<sup>85</sup> P.L. 99-445; 100 Stat. 1122; 16 U.S.C. 1241 note & 1244.

HOUSE AND SENATE STANDING COMMITTEES WITH AUTHORIZING JURISDICTION  
OVER HISTORIC PRESERVATION <sup>86</sup>

The general subject jurisdictions of House and Senate committees are enumerated in each chamber's rules--Rule X in the House and Rule XXV in the Senate. Referral of measures in each chamber is made in accordance with these rules. Other factors, however, influence referral of legislation. For instance, a committee reporting a bill subsequently enacted into law is presumed to acquire the ability to consider future amendments to the law as well as oversight of the law's implementation. In addition, the referral of measures may be modified by the enactment of new laws. For example, if a comprehensive measure which supplements an earlier one is enacted, the committee which considered the more comprehensive law could be presumed to obtain legislative interests in the earlier one. The creation of new committees; changes in chamber Rules; precedents established by the referral of measures; and actions taken by the committees and subcommittees themselves, such as hearings or investigations, also influence the referral of measures. As a result, committee jurisdiction in a policy area may be complex and fragmented, and shared jurisdiction among committees is not uncommon. The complexity of committee jurisdiction is more acute at the subcommittee level. Standing committees, almost without exception, divide their subject matter among multiple subcommittees, in accordance with committee rules.

Committee jurisdiction over historic and archaeological preservation illustrates this complexity, overlap, and fragmentation. Numerous House and Senate committees have a potential role in preservation issues, principally based on chamber rules and referral of legislation. The remainder of this section attempts to delineate the committees, and where appropriate, the subcommittees, with jurisdiction over historic and archaeological preservation. This section is subdivided into three categories, predominant, secondary, and ancillary jurisdiction, based on the perceived degree of a committee's jurisdiction over the issue. Within a subdivision, no attempt is made to rank committees by degree of jurisdiction over the issue, and committees are not listed in a particular order. It should be noted that committees may share jurisdiction over programs, entities, or issues contained in their jurisdictional descriptions, and where sharing occurs, an attempt has been made to note the pertinent, multiple committees. Furthermore, enumerations of preservation-related programs, entities, and issues within a committee's jurisdiction are illustrative, and not inclusive.

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<sup>86</sup> This section was prepared by Carol P. Hardy, research assistant of the Government Division of the Congressional Research Service.

PREDOMINANT JURISDICTION

Predominant jurisdiction over historic and archaeological preservation resides in the House Committee on Interior and Insular Affairs and the Senate Committee on Energy and Natural Resources. Both committees have jurisdiction over key preservation acts, including the Antiquities Act of 1906, Historic Sites Act of 1935, National Historic Preservation Act of 1966; and the Archaeological Resources Protection Act of 1979. They also have jurisdiction over the Advisory Council on Historic Preservation, The National Park Service and the Bureau of Land Management in the Interior Department, the National Building Museum, the Olmsted Heritage Landscapes Act, international preservation legislation (with the House Foreign Affairs and Senate Foreign Relations Committees), and historic shipwrecks, structures, and artifacts located beneath United States waters (with the Committee on Merchant Marine and Fisheries).

In the House Interior Committee, the primary subcommittee with jurisdiction over historic and archaeological preservation is the Subcommittee on National Parks and Public Lands. This subcommittee handles preservation-related legislation regarding public lands generally (except in Alaska); forest reserves created from the public domain (except in Alaska); the National Wilderness Preservation System (except in Alaska); the commemoration and preservation of landscapes; the preservation of prehistoric ruins and objects of interest on the public domain, and other historic preservation programs, including the Historic Preservation Fund; the Advisory Council on Historic Preservation; the National Park System and its units, including improvements to national, historical parks and related archaeological protection sites; the protection and restoration of historic and prehistoric sites; the National Wild and Scenic Rivers System; the National Trails System; national recreation areas and other units established for protection, conservation, preservation, or recreational development; military parks, battlefields, national cemeteries, and parks administered by the Secretary of the Interior in the District of Columbia; the Land and Water Conservation Fund; the Pennsylvania Avenue Development Corporation (with the Committee on Government Operations); and programs for international cooperation in the field of historic preservation. In addition, the Subcommittee on Insular and International Affairs has jurisdiction over cooperative efforts to encourage, enhance, and improve international programs for the protection of the environment and the conservation of natural resources.

The Senate Energy Committee also has one primary subcommittee which handles historic and archaeological preservation legislation--the Subcommittee on Public Lands, National Parks and Forests. Essentially, it has jurisdiction over matters considered by the House Interior Subcommittee on National Parks and Public Lands.

SECONDARY JURISDICTION

Three pairs of House and Senate Committees have secondary jurisdiction over historic and archaeological preservation. The House Ways and Means and Senate Finance Committees have jurisdiction over tax matters, including

preservation and rehabilitation tax provisions and incentives, such as investment tax credits for rehabilitation and conservation of historic structures and estates. The committees also have jurisdiction over tax provisions regarding gifts, including cultural and archaeological objects, and tax deductions for preservation and conservation easements and enterprise zones. These issues are generally handled by the Ways and Means Subcommittee on Select Revenue Measures and the Finance Subcommittee on Taxation and Debt Management. The Committees also handle trade legislation, including international trade of cultural, historic, and archaeological objects, and have jurisdiction over the Convention on Cultural Property Implementation Act. The Ways and Means Subcommittee on Trade and the Finance Subcommittee on International Trade generally consider legislation of this sort. In the House, legislation concerning the international trade of cultural, historic and archaeological objects is also considered by the Committee on Banking, Finance, and Urban Affairs, in particular the Subcommittee on International Finance, Trade, and Monetary Policy.

The House Committee on Banking, Finance, and Urban Affairs and the Senate Committee on Banking, Housing, and Urban Affairs have jurisdiction over housing, and consider legislation concerning rehabilitation of and improvements to public buildings, and properties on the National Register of Historic Places. In addition, the committees have jurisdiction over urban and community development programs, which may benefit historic and archaeological land, public works, and sites. The committees also have jurisdiction over programs which may authorize grants and loans for improvements to and preservation of historic properties and structures, such as Urban Development Action Grants, Community Development Block Grants, and the National Housing Act. The House Banking Subcommittee on Housing and Community Development and the Senate Banking Subcommittee on Housing and Urban Affairs generally consider legislation of this sort.

The House Committee on Public Works and Transportation and the Senate Committee on Environment and Public Works have jurisdiction over public buildings, including historic ones (with the House Interior and Senate Energy Committees, depending on funding for, maintenance of, and purposes of buildings); construction or rehabilitation of public capital investment and preservation projects; and economic and regional development programs, which may contain projects for historic and archaeological preservation. The committees also have jurisdiction over construction, reconstruction, maintenance, and care of Government buildings in the District of Columbia, some of which have programs of pertinence to historic and archaeological preservation, such as the Library of Congress and the Smithsonian Institution. The Senate Governmental Affairs Committee, in particular the Subcommittee on Government Efficiency, Federalism, and the District of Columbia, also has jurisdiction over the affairs of the District of Columbia, including the preservation and restoration of historic sites in the District. In the House, this legislation is generally considered by the Committee on the District of Columbia, in particular the Subcommittee on Government Operations and Metropolitan Affairs. The House Public Works Committee also has jurisdiction over transportation, including the impact of transportation on historic properties; in the Senate, the Committee on Commerce, Science, and Transportation has jurisdiction over transportation matters.

ANCILLARY JURISDICTION

Several House and Senate committees have jurisdiction related to historic and archaeological preservation, or partial jurisdiction over the issue.

The House Committee on Agriculture and the Senate Committee on Agriculture, Nutrition, and Forestry have jurisdiction over forestry, and forest reserves other than those created from the public domain. This jurisdiction is relevant insofar as some historic and archaeological sites are contained in these forests. Forestry legislation is generally considered by the House Agriculture Subcommittee on Forests, Family Farms, and Energy, and the Senate Agriculture Subcommittee on Agricultural Research, Conservation, Forestry, and General Legislation. The committees also have jurisdiction over a number of rural development, protection, and conservation programs, which may affect historic and archaeological resources and sites. These programs are generally within the purview of the House Agriculture Subcommittee on Conservation, Credit, and Rural Development, and the Senate Agriculture Subcommittee on Rural Development and Rural Electrification.

The House Committee on Government Operations and Senate Committee on Governmental Affairs have jurisdiction over the National Archives and the National Archives and Records Service, which house, preserve, or manage the disposition of historic, Federal records. The committees also have broad jurisdiction over Government activities, including executive branch reorganizations which may involve buildings which house historic or archaeological objects, or which operate preservation programs. As previously noted, the House Government Operations and Interior Committees share jurisdiction over the Pennsylvania Avenue Development Corporation.

The House Committee on House Administration and the Senate Committee on Rules and Administration have jurisdiction over Government agencies, such as the Smithsonian Institution and the Library of Congress (with the Committees on Government Operations and Public Works and Transportation in the House, and Governmental Affairs and Environment and Public Works in the Senate), which may sponsor preservation projects and seminars, and purchase, house, and preserve historic and archaeological books, manuscripts, paintings, and art objects. The committees also have jurisdiction over the erection of historic monuments to the memory of individuals (with the House Interior and Senate Energy Committees).

The House Committee on Foreign Affairs and Senate Committee on Foreign Relations have jurisdiction over international preservation legislation, such as the protection and conservation of cemeteries, monuments, and historic buildings located abroad and associated with the foreign heritage of the United States (with the House Interior and Senate Energy Committees). In particular, the House Subcommittee on International Operations considers legislation of this sort. In the Senate, this legislation traditionally has been handled by the full committee.

The House Committee on Education and Labor and the Senate Committee on Labor and Human Resources have jurisdiction over employment programs,

including those with projects to conserve and preserve natural and cultural resources, rehabilitate and improve historic sites and buildings, renew urban areas, and maintain national parks. In particular, the House Subcommittee on Employment Opportunities and the Senate Subcommittee on Employment and Productivity have jurisdiction over employment programs. The committees also have jurisdiction over the Institute for Museum Services, which may provide grants to historic museums for preservation projects, and over the National Endowment for the Arts and Humanities, which has programs that may benefit historic properties.

The House Committee on Merchant Marine and Fisheries and the Senate Committee on Commerce, Science, and Transportation have jurisdiction over coastal zone management, including the protection and preservation of historic resources in the coastal zone. The Merchant Marine Committee also shares jurisdiction with the Interior Committee over historic shipwrecks, structures, and artifacts located beneath United States waters, as previously noted. In addition, the Merchant Marine Subcommittee on Fisheries and Wildlife Conservation and the Environment has jurisdiction over the National Environmental Policy Act (NEPA), which contains historic preservation provisions. In the Senate, the Committee on Environment and Public Works, in particular the Subcommittee on Hazardous Wastes and Toxic Substances, has jurisdiction over NEPA.

Finally, the House and Senate Judiciary Committees have jurisdiction over provisions of the United States Code relating to historic and archaeological material and cultural property, including provisions regarding stolen archaeological and ethnological material, and the House and Senate Armed Services Committees consider legislation regarding historic military installations and museums (with the House Interior and Senate Energy Committees).

Moreover, although this section has been limited to the jurisdiction of relevant authorizing committees, it should be noted that several subcommittees of the House and Senate Appropriations Committees make appropriations for agencies with historic and archaeological preservation programs. Pertinent House and Senate Appropriations Subcommittees include Interior; Energy and Water Development; HUD-Independent Agencies; and Treasury, Postal Service, General Government.

CURRENT ISSUES

There are a number of current issues for historic preservation which may require some policy decisions. Among these issues are the historic preservation partnership, the appropriate limits of the Advisory Council section 106 review authority, preservation tax credits, the future of the Historic Preservation Fund, participation of Indian Tribes, preservation of church property, technologies for historic preservation, and comprehensive historic preservation legislation.

DECENTRALIZATION OF THE HISTORIC PRESERVATION PARTNERSHIP

The Federal, State, and local governmental, and private elements of the historic preservation partnership have evolved over time, and questions have been raised as to whether the balance in this partnership is comfortable at this time. In particular, the Administration has raised questions as to whether some of the functions at the Federal Governmental level might not be better carried out at the State or local level. Particular functions which fall into this category are maintenance of the National Register, "106" review of Federal projects affecting historic properties, and review of rehabilitation projects for which developers claim investment tax credits.

These functions currently are carried out at both the Federal and State level: at the Federal level, by the National Park Service and the Advisory Council on Historic Preservation; at the State level by the State Historic Preservation Offices.

The Interior Department has stated <sup>87</sup> that many States have developed the ability to make competent and predictable preservation decisions for properties of State and local significance, and are now in a position for taking on decision-making responsibilities in the national program. The Interior Department advocates amending the NHPA so that the Federal Government no longer has to make decisions on properties of State and local significance. Ideally, according to the Interior Department, States which meet the Secretary's standards should be able to list properties of State and local significance, and certify the historic significance of properties for Federal tax purposes without a property-by-property review by the National Parks Service.

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<sup>87</sup> U.S. Department of the Interior, The Secretary of the Interior's 20th Anniversary Report on the National Historic Preservation Act. 1986. p. 20.

Within this context of State assumption of more responsibility, the Interior Department indicates that the role of the National Park Service should be one of "programmatic oversight, quality control, technical assistance, and review of appeals of decisions." Accordingly, the National Parks Service would continue to maintain the National Register, to make listing decisions on nominations from Federal agencies, to make listing decisions on State nominations in disputed cases and other exceptional circumstances, and to assist the Secretary in making decisions about designation of National Historic Landmarks.

The Advisory Council has indicated that it would be desirable to explore decentralizing appropriate Federal historic preservation activities to the SHPO's, with provision for Federal standard-setting, monitoring, and audits, and for appeals to Federal authorities when differences occur at the State level. The Council also has indicated that assignment of Federal responsibilities to the States would require the Federal Government to provide the States adequate administrative and financial assistance.

The National Conference of State Historic Preservation Officers supports further decentralization of appropriate historic preservation activities, but insists, in the same manner as the Advisory Council, that any such decentralization would require the Federal Government to provide adequate funding for the governmental entities assuming more responsibilities. The National Conference believes that the intergovernmental partnership provided by Federal law is a highly advantageous arrangement in terms of leveraging Federal dollars and avoiding large centralized Federal staffs, and is an early example of what the Reagan Administration would call "New Federalism". The organization feels that the partnership has grown to a point where the "senior partner" (the Federal Government) can give more work to the "junior partner" (State and local governments).<sup>88</sup>

A related question is whether some functions should be delegated even further. The 1980 Amendments to the NHPA established the Certified Local Governments (CLG) program, where local programs could share in grants-in-aid made to the States. Some local governments support this increased delegation. Some preservationists, on the other hand, are concerned that there be some mechanism for insuring quality control in these local programs. Still others are concerned about that added layer of project review that would be imposed by CLG's.

The October 1986 regulation revisions<sup>89</sup> provide that the presence of the Advisory Council is not always required in the section 106 consultation process, thereby providing qualified States the opportunity to assume more decision-making responsibility. The revisions also provide that a CLG may be authorized to assume any of the duties of the SHPO, if the SHPO, the Advisory

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<sup>88</sup> Letter dated December 18, 1986 from Executive Director of National Conference of State Historic Preservation Officers to author.

<sup>89</sup> 36 CFR 800.1(c)(2)(i) and 800.5(e), contained in 51 FR 3115, September 2, 1986.

Council, and the concerned local government can develop an agreement to such an authorization.

### SECTION 106 REVIEW

Section 106 of the NHPA requires Federal agencies to consider the effects of their undertakings on properties listed in or eligible for listing in the National Register. Section 106 provides that Federal agencies shall afford the Advisory Council on Historic Preservation a "reasonable opportunity to comment with regard to such undertaking".<sup>90</sup> The procedures for implementing this requirement are contained in the Council's 1986<sup>91</sup> regulations.

The earlier 1979 regulations emphasized consultation with SHPO's and other interested parties to identify and, when possible, adopt alternatives to avoid or reduce damage to historic properties. When these regulations were written, however, there was no explicit statutory authority under section 106 requiring this consultation process.<sup>92</sup> Questions were raised as to whether or not the Council had exceeded its authority through these regulations, or, alternatively, whether it had provided the most effective mechanism for insuring the protection of historic properties.

The Council argued that it had the authority to establish such requirements, and that these consultation requirements comprised the most reasonable way to identify and resolve conflicts between historic preservation and agency missions. The Council argued that section 106 should be amended to make this authority explicit.

In partial support of its position, the Council pointed to section 110(f) of the NHPA, which was added through the 1980 amendments. This section requires that Federal agencies to undertake "planning and actions ... to minimize harm", but only when these undertakings may have adverse effects on National Historic Landmarks (but not historic properties generally). The Council recognized that this is a narrower and more stringent standard than that established by section 106. While arguing that statutory changes to reflect the consultation requirements of its regulations are unnecessary, an amendment to section 106 similar to the language of section 110(f), but intended for all historic properties (not just National Historic Landmarks) would clarify the intent of section 106 review.

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91 Revised amendments to 36 CFR 800 effective October 1, 1986, and supersede the 1979 amendments. Final revisions published in 51 FR 31115, September 2, 1986.

92 Section 110(f), which required this consultation process, was added to the NHPA by 1980 amendments to the Act.

The Interior Department, on the other hand, argued that the Council did not have the authority it claimed, and that the Council sought a more regulatory role over agency undertakings than section 106 envisions. These critics maintained that the Council should limit itself to commenting on agency actions presented to it for review.

The October 1986 revisions to the section 106 regulations provided greater flexibility for the consultation process, and provided greater opportunities for State assumption of responsibilities. Federal agencies could now resolve matters directly through consultation with the SHPO, without involving the Advisory Council. The Advisory Council would only participate where the Federal agency, the SHPO, or the Council so choose, except when a project affects a National Historic Landmark, in which case Council participation is mandatory. The Advisory Council would still review Memoranda of Agreement resulting from consultation.

### HISTORIC PRESERVATION TAX INCENTIVES

The historic preservation tax credit program is a critical element in the rehabilitation of many historic commercial and residential buildings. Nevertheless, questions have been raised as to whether or not the benefits of this program outweigh the costs. Questions also have been raised as to whether or not the principal Federal agency administering tax credits--the National Park Service--should be doing so, since it has no budgetary responsibility for the revenue cost. The 99th Congress considered, and left largely intact, the preservation tax credit provisions which had been enacted by the Economic Recovery Tax Act (ERTA) of 1981.

Before a rehabilitation project may receive a preservation tax credit, it must be certified. Currently, there are three governmental entities involved in the processing of project applications for certification: States, the National Park Service, and the Internal Revenue Service. At the State level, SHPO's review applications, and recommend that the National Park Service approve or disapprove certification. The National Park Service then takes action on these applications. The National Park Service has relied, increasingly, on the recommendations of the SHPO's.<sup>93</sup> Finally, the IRS, using the information generated by the National Park Service, ensures that tax benefits accrue only to those taxpayers who have received all the necessary certifications.

The tax reform legislation of the 99th Congress (P.L. 99-514) retained the principle of tax credits, although in modified form. The legislation reduced the number of tax credit tiers: the three tax credit tiers--25 percent for certified historic structures, 20 percent for 40-year old buildings, and 15 percent for 30-year old buildings--would now be two--20 percent for certified historic structures, and 10 percent for all

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<sup>93</sup> U.S. General Accounting Office, Information on Historic Preservation Tax Incentives. GAO/GGD-84-47 (March 29, 1984). Page iv.

non-certified structures. However, many are concerned that the "passive-loss" restriction <sup>94</sup> could render the modified credits useless for many developers.

### Support for the Credits

Many have praised the tax credit program because it has saved thousands of historic commercial and residential buildings, and revitalized depressed urban areas. In describing the reasons for rehabilitation tax credits, the Joint Committee on Taxation indicated that preservation tax credits were enacted so that the effects of other ERTA changes, which provided incentives for new structures in new locations, would not be at the expense of older structures, neighborhoods, and regions. <sup>95</sup>

Others have praised tax credits for pumping money and jobs into the economy. A recent GAO report <sup>96</sup> indicated that individuals and corporations reported about \$6.1 billion in qualified rehabilitation expenditures during tax years 1982 and 1983. Of these expenditures, 53.8 percent were for restoration of 40-year old buildings, 36.4 percent for restoration of certified historic structures, and 9.8 percent for restoration of 30-year old buildings. GAO estimated that these expenditures earned taxpayers \$1.3 billion in tax credits. Other reports have cited similar statistics. <sup>97</sup>

The Advisory Council on Historic Preservation has generally supported the retention of the rehabilitation tax credits. In stating its position, the Council cites its 1983 report, where it is stated that "the...tax credit for certified rehabilitation of certified historic structures has been an

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<sup>94</sup> "Passive-loss" refers to the situation under current law where real estate investors are entitled to deduct the prorated expenses (such as interest, insurance, taxes, and repairs) and depreciation for buildings which they own. The restriction in P.L. 99-514 limits the use of "passive loss" to buildings that are personally managed by the owner. Thus, buildings owned in a real estate partnership would not be able to use the "passive-loss" tax benefits. P.L. 99-514 allows a four-year phase-in period for the "passive-loss" restriction.

<sup>95</sup> U.S. Congress. Joint Committee on Taxation. General Explanation of the Economic Recovery Tax Act of 1981 (H.R. 4242, 97th Congress; P.L. 97-34) (U.S. Gov't Print. Off. 1981). p. 113.

<sup>96</sup> U.S. General Accounting Office, Tax Policy and Administration: Historic Preservation Tax Incentives. GAO/GGD-86-112FS. August 1986. Page 8.

<sup>97</sup> Sally G. Oldham, H. Ward Jandl, in Urban Land (March 1982) "Preservation Tax Incentives: New Investment Opportunities Under the Economic Recovery Tax Act". Authors state that since 1976, Federal tax incentives have helped to stimulate more than \$1.6 billion in private investment in more than 3,300 preservation projects.

effective tax incentive for stimulating private investment in the preservation of significant historic buildings." <sup>98</sup>

State Historic Preservation Offices also support the preservation tax credits. In response to a questionnaire on the effect of removal of tax incentives, 88 percent of State Historic Preservation Officers responding indicated that the quantity and quality of historic building rehabilitation would have suffered seriously without the tax incentives. <sup>99</sup>

The National Trust for Historic Preservation argues <sup>100</sup> for the importance of tax credits because they have generated billions of dollars of investment in old buildings--buildings that otherwise would have been torn down or allowed to decay. It points out that the goal of the rehabilitation credit is not to preserve a building as a museum, but rather to put it back to use to meet current housing, retail, commercial, and industrial needs. The Trust cautions, however, that the rehabilitation generated through the tax credits must be appropriate to the buildings' character. The Trust also points out that the retention of the rehabilitation tax credits, at a time when the 99th Congress eliminated many tax incentives in other areas, reflects continued congressional recognition of the social and economic benefits this country derives from historic and older building rehabilitation projects.

Private sector interests (developers and investors) have found that rehabilitation of historic structures has become a profitable undertaking through taking advantage of tax credits. These interests would be opposed to changes in the tax law which would minimize this profitable investment in historic preservation.

#### Opposition to the Credits

In spite of the increased value of rehabilitated historic structures and attendant positive effects produced, some have criticized the tax credits for a variety of reasons. First, the credits deny revenue to the Treasury. In the FY 1987 budget, the Office of Management and Budget estimated that the revenue loss was \$430 million (\$140 corporate and \$290 individual) for FY

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<sup>98</sup> Advisory Council on Historic Preservation, Federal Tax Law and Historic Preservation. Report to the President and Congress. 1983.

<sup>99</sup> General Accounting Office, Cultural Resources--Results of Questionnaire on State Historic Preservation Activities. GAO/RCED-86-60FS. p. 17.

<sup>100</sup> National Trust for Historic Preservation, A Guide to Tax-Advantaged Rehabilitation, edited by Ian D. Spatz, written by Sally G. Oldham, Jayne F. Boyle, and Stuart M. Ginsberg (Preservation Press, 1986).

1985, \$550 million (\$180 corporate and \$370 individual) for FY 1986, and will be \$715 million (\$235 corporate and \$480 individual) for FY 1987. <sup>101</sup>

Others have criticized the tax credits because they may provide wealthy developers and investors an undue advantage. Still others have criticized the tax credits because they believe they may distort the national program by causing SHPO's and others to devote more time and energy to the identification and consideration of commercial properties at the expense of other types of property.

During the tax reform debate in the 99th Congress, the Administration proposed the repeal of the rehabilitation tax credits. In the absence of these special credits, the Administration proposed that the full amount of rehabilitation expenditures be recovered through normal cost recovery rules.

The Administration argued <sup>102</sup> that there was no evidence that the combined tax benefits granted to rehabilitators of older buildings, when compared to the tax benefits available to rehabilitators of newer buildings, were an appropriate incentive for investment in older buildings. Furthermore, the Administration alleged that the tax credit was not just an incentive for investment in deteriorating areas, but was also an incentive for modernization of older structures in stable areas. Finally, the Administration pointed out that one of the three credit tiers--the 25 percent credit for certified historic structures--was effectively administered by the Department of the Interior, an agency without the budgetary responsibility for the revenue cost. The Interior Department, it said, had no direct incentive to compare probable costs and benefits.

#### HISTORIC PRESERVATION FUND

Another issue before Congress is the reauthorization of section 108 of the NHPA, which transfers set amounts of monies from the Outer Continental Shelf oil and gas revenues to the Historic Preservation Fund. The Fund, in turn, provides a critical source of money from which Congress makes appropriations for State grants-in-aid and for the National Trust for Historic Preservation.

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<sup>101</sup> Executive Office of the President, Office of Management and Budget, Special Analyses, Budget of the United States Government, Fiscal Year 1987. Table G-1, p. G-38. These figures compare to estimates made in 1981 by the Joint Committee on Taxation. The Joint Committee estimated that the revenue loss from the tax credits in ERTA would be \$9 million in 1981, \$129 million in 1982, \$208 million in 1983, \$240 million in 1984, \$304 million in 1985, and \$414 million in 1986. [U.S. Congress. Joint Committee on Taxation. General Explanation of the Economic Recovery Tax Act of 1981 (H.R. 4242, 97th Congress; P.L. 97-34) (U.S. Gov't Print. Off. 1981). p. 116.]

<sup>102</sup> Administration proposal, page 296. Subsection entitled "Repeal Tax Credit for Qualified Rehabilitation" May, 1985.

balance would be "capitalized" and become interest-bearing. The goal of such an action would be to have a continuing source of Federal funding for State matching grants and the National Trust, which would remove the national program from the need for annual congressional appropriations.

#### PARTICIPATION OF INDIAN TRIBES

Another question which Congress may wish to consider is the role of Indian tribes and Native American groups in the national historic preservation program. Heretofore, these groups have had no statutory role in historic preservation, although Interior Department and Advisory Council regulations have included them in their regulations. Within this context, the participation of Indian Tribes and Native American groups has been described as "irregular,"<sup>105</sup> although the Interior Department has indicated that a number of Indian governments have "fairly well developed historic preservation programs and could participate in the Federal preservation program".<sup>106</sup> National Indian organizations, and the Bureau of Indian Affairs (BIA) at the Interior Department, have proposed more formalized participation in historic preservation. One question is how to bring about this more formalized participation.

Since Indian tribes are sovereign entities, their actions may not be subject to section 106 review, although such actions do require review to the extent that they require approval by BIA. Another question is whether tribal historic preservation programs should be equivalent to programs of SHPO programs, and if so, whether they should receive grants-in-aid, and whether they should be required to meet the same standards.

The Interior Department indicates that designated tribal officials could perform the duties and have the authorities of SHPO's for purposes of actions affecting properties in each Tribe's reservation lands.

The Advisory Council indicates that it has no consensus opinion on whether tribal historic preservation programs should be allowed to substitute for programs of SHPO's. Its reasoning is that such substitution would have to be "extremely flexible to allow for the differences among tribes and regions"<sup>107</sup> It further adds that such substitution should not result in diminished funding for SHPO operations. Regarding the application of NHPA requirements to reservations, the Council argues that they should continue to apply whenever an approval or other action by the BIA or another Federal

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<sup>105</sup> Advisory Council on Historic Preservation, (Draft) The National Historic Preservation Act: An Assessment. July 1986.

<sup>106</sup> U.S. Department of the Interior, The Secretary of the Interior's 20th Anniversary Report on the National Historic Preservation Act. 1986. p. 21.

<sup>107</sup> Advisory Council on Historic Preservation, The National Historic Preservation Act: An Assessment. 1986. p. 63.

agency is involved. On the other hand, the Council argues, these requirements should not apply (as they do now) to tribal actions that require no approval by a Federal agency.

The October 1986 revisions to the Council's regulations <sup>108</sup> provided that Indian tribes may assume SHPO duties with respect to undertakings affecting tribal lands, provided the SHPO concurs and the Council finds that the tribe's procedures meet the purposes of the section 106 regulations. Furthermore, when an Indian tribe has established formal procedures relating to historic preservation, section 106 review for projects on the tribe's lands should be conducted as consistently as possible with those procedures.

#### PRESERVATION OF CHURCH PROPERTY

To preserve cultural history and foster civic pride, States confer landmark status on buildings of historic or architectural significance. In inner cities, churches often receive such landmark designation, and as a result are required to maintain the structure in accordance with landmark regulations. These churches sometimes are located on valuable property where high density development is the economic rule. Landmark regulations may restrict owners from high density development of the property. <sup>109</sup> As a result, religious societies which own this property may suffer loss of usable space and financial strain.

In recent years, a growing number of inner-city churches in the United States have tried to unlock church real estate assets by demolishing, rebuilding, selling, or leasing property. Because many downtown churches have landmark designation and/or are protected by local historic preservation laws, preservation groups and some political jurisdictions have tried to restrict the churches from razing landmark buildings to clear land for more intense development.

If the landmark building is a church, the burden of landmark designation raises first amendment concerns. Churches have been challenging such preservation-based rejections of proposed plans for high density development of their property through the "free exercise doctrine". <sup>110</sup> Within the "free

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<sup>108</sup> Final revisions to 36 CFR 800.1(c)(iii), effective October 1, 1986; and contained in 51 FR 3115, September 2, 1986.

<sup>109</sup> Landmark preservation laws regulate the manner in which designated structures may be altered, the circumstances under which a landmark may be demolished, and the standards by which the physical condition of the landmark must be maintained.

<sup>110</sup> Godshall, Scott David, "Land Use Regulation and the Free Exercise Clause", in Columbia Law Review, v. 84, Oct. 1984, 1562-1589. See also Newell, Evelyn, "Model Free Exercise Challenges for Religious Landmarks" in Case Western Law Review, v. 34, no. 1, 1983: 144-171.

exercise doctrine", the basis for lower court decisions often has been whether the religious society's activities in renovated structures would be secular or religious.

An example in New York City is the partial demolition of St. Bartholomew's Church, which has been designated an historic landmark. The church developed a plan to demolish most of its community house and construct a fifty-nine story office tower. Rental revenues would be used to expand the church's community activities. The New York Landmarks Commission rejected the plan.

An example in Washington, D.C. is the development plan of the Catholic Archdiocese of Washington for St. Matthew's Cathedral on Rhode Island Avenue, N.W.. In addition to the renovation of the Cathedral's Romanesque facade, the plan would restore church-owned townhouses adjacent to the Cathedral, and build a ten-story, office building (170,000 square feet) behind the townhouse facades. The Cathedral and townhouses are part of the Dupont Circle Historic District. The District of Columbia Preservation Review Board and several other preservation groups gave initial approval of the redevelopment plan. The D.C. Zoning Commission gave conditional approval. The Dupont Circle Citizens Association and some office workers opposed the plan.

#### TECHNOLOGIES FOR HISTORIC PRESERVATION

According to the Office of Technology Assessment, the United States is losing prehistoric and historic cultural resources at an alarming rate, in spite of the best efforts of preservation professionals to identify and protect them. Many of these cultural sites, structures, and landscapes may be destroyed or altered before they are catalogued and protected. Application of existing technology could reduce this loss. <sup>111</sup>

The application of existing technology could occur in all phases of archaeological and historic preservation. In the discovery phase, there are various remote sensing techniques available. Techniques from aircraft or spacecraft include photography, multispectral scanning, and imaging radar. Subsurface techniques include georadar, soil resistivity meter, soil conductivity meter, magnetometer, and metal detection. Underwater techniques include side-scan sonar, sub-bottom profiler, magnetometer, and remotely operated vehicles (ROV's). Other possible technologies for the discovery phase are predictive locational modeling, which often requires the use of a computer to predict the distribution of archaeologically significant material.

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<sup>111</sup> For a more in-depth discussion of technologies for cultural preservation, see the Office of Technology Assessment document "Technologies for Prehistoric and Historic Preservation", OTA-E-320, Sept. 1986.

In the archival phase, technologies which could be applied include computerized information systems which make nationwide links between archives and libraries, and optical disk storage.

In the analysis stage, the one group of adaptable technologies includes geographic information systems, which are computerized databases of soil type, plant type, distribution of sites and structures, or population distribution, which may help reveal patterns of settlement and land use. Another group of adaptable technologies are dating techniques, which include dendrochronology, radiocarbon, archaeomagnetism, and obsidian hydration.

A variety of educational, institutional, managerial, and financial obstacles, however, have prevented their use. As an example, technologies appropriate for cultural preservation have been developed in the natural science and engineering professions, but have not yet been adapted to the historic preservation profession. Similarly, underwater archaeology depends primarily on the technologies borrowed from the offshore oil and gas exploration industry.

The Office of Technology Assessment has recommended three possible options for a Federal program for transferring technology from other areas into prehistoric and historic preservation. The first is a Federal Center for Preservation Technology within the Department of the Interior or some other Federal agency. The second is National Center for Preservation Technology, an institution outside the Federal Government and managed by a consortium of universities. The National Center would serve as a resource not only for the Federal Government (as the Federal center would), but also for State and local needs. A final option is a Preservation Technology Board, which could exist by itself, or supplement one of the first two options. The Board would be composed of professionals from all parts of the preservation community.

#### COMPREHENSIVE HISTORIC PRESERVATION LEGISLATION

Previous sections of this report have shown the patchwork quilt of Federal laws which make up the historic preservation national program. To the uninitiated, the number of laws is bewildering, and at times some of these laws are at odds with each other. Questions have arisen as to whether these numerous historic preservation authorities might not be consolidated into a single comprehensive piece of legislation.

Among the most important major laws are the Antiquities Act of 1906, the Historic Sites Act of 1935, the National Historic Preservation Act of 1966, the Reservoir Salvage Act of 1960, the Archaeological and Historic Preservation Act of 1974, Title II of the Land and Water Conservation Act of 1976 (which established the Historic Preservation Fund), the Archaeological Resources Protection Act of 1979, the National Historic Preservation Act Amendments of 1980, the Economic Recovery Tax Act of 1981, the 1984 amendments to the National Historic Preservation Act, and the Tax Reform Act of 1986.

Other laws, and parts of laws, which round out the responsibility are the 1949 Act which established the National Trust for Historic Preservation, the National Scenic Trails Act of 1968, the Tax Reform Act of 1976, section 315 of the Revenue Act of 1978, the enactment of 1979 which permitted the NPS to accept private donations and extended the authorization for the Advisory Council, section 205 of the Tax Equity and Fiscal Responsibility Act of 1982, section 303 of the Department of Transportation and Motor Carrier Safety Act of 1983, and parts of the Deficit Reduction Act of 1984.

The National Conference of State Historic Preservation Officers, through its legislation committee, is evaluating the national preservation program and drafting comprehensive historic preservation legislation to "make it easier for Federal agencies to meet their responsibilities, easier for the public to understand in a comprehensible way the Federal program for preservation, and reduce the potential for confusion and contradictory actions".

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