

THE HOUSE THAT SMOKEY BUILT: THE FOREST SERVICE MANAGEMENT OF
HISTORIC STRUCTURES IN WILDERNESS

By

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The House That Smokey Built: The Forest Service Management of Historic Structures in Wilderness

Committee Chair: Dr. Perry J. Brown

Debates about the appropriateness of historic structures being present and preserved in wilderness are not new issues. In some form or another, this topic has surfaced, been debated, then simmered, but never properly addressed or resolved. The purposes of this paper are to identify management gaps within the Forest Service administration regarding the management of historic structures within wilderness areas and to recommend how these gaps can be filled.

Data were collected from 20 people using semi-structured qualitative interviews. The questions focused on the employees perceptions of how well the Forest Service was able to meet its legal obligations, if they felt the Forest Service was living up to the standards they set for themselves in their policy, individual experiences resulting in the day to day management of historic structures in wilderness, and Federal laws such as the Wilderness Act and the National Historic Preservation Act.

Due to gaps in written policy, many problems arise regarding the management of historic structures in wilderness. Respondents felt they had problems meeting legal responsibilities in terms of lacking money, time, resources (manpower and materials), desiring more skill focused training and almost constantly partaking in debates driven by ideologies of key players involved with the management of historic structures in wilderness. The research provides recommendations to the Forest Service producing a policy that specifically addresses: 1) Developing a philosophical position for the agency, 2) Administering historic structures in wilderness under its own heading in the policy, 3) Clarifying 'Release from management' and 'Management by neglect', 4) Training, 5) Monitoring, and 6) Interpreting the resource.

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Table of Contents

ABSTRACT	iii
ACKNOWLEDGEMENTS	iv
CHAPTER 1 - INTRODUCTION	1
The Problem.....	1
Why are historic structures important?.....	6
Whys is wilderness important?.....	8
Where do we go.....	10
CHAPTER 2 – REVIEW OF LEGISLATION	12
The Wilderness Act of 1964	13
Alaska National Interest Lands Conservation Act of 1980.....	15
National Historic Preservation Act of 1966.....	16
Archaeologic Resource Protection Act of 1979	20
Minimum Requirements	21
CHAPTER 3 - MEHTODOLOGY	22
Approach.....	22
Study Respondents	23
The Interview	23
Data Collection and Analysis.....	24
CHAPTER 4 - RESULTS	25
The Manual	25
The Why	28
Useful tolerance v. just being there.....	33
Wilderness: East, West and caught in the middle	36
Training	40
Getting the job done	41
Summary	42
CHAPTER 5 - RECCOMENDAITONS	43
Conclusion.....	46
References	48
Appendices	50
A. Wilderness Act.....	50

B. National Historic Preservation Act	56
C. Interview Questions.....	99
D. Respondent Informed Consent Form	102
E. Respondent Informed Consent Form – Phone Script.....	104

CHAPTER 1 - INTRODUCTION

“All landscapes are constructed. Garden, forest, city and wilderness are shaped by rivers and rain, plants and animals, human hands and minds. They are phenomena of nature and products of culture” (Spirn 1996, p.113).

The Problem

The US Forest Service oversees 35,479,099 acres of wilderness across the nation (<http://www.wilderness.net>). The agency’s credo, “protecting the land and serving the people” is a recognizable reference to resource management. This paper focuses on two important resources the Forest Service manages: wilderness areas and historic structures. One is of the natural world containing elements that can be renewed. The other is non-renewable, carved from that natural world and is imbedded within the culture of the Forest Service and America itself.

The purposes of this paper are to identify management gaps within the Forest Service administration regarding the management of historic structures within wilderness areas and to recommend how these gaps can be filled. Why might we ask how the Forest Service values and therefore manages its historic structures within wilderness? We ask because these structures are historic and located within wilderness presenting an array of management issues. It is possible to sort through this array, but finding a way to do so will require a bit more time and persistence. The time and persistence dedicated to this management process will result in leaders making decisions with the whole spectrum of facts about each resource.

Debates about the appropriateness of historic structures being present and preserved in wilderness are not new issues. In some form or another, this topic has surfaced, been debated, then simmered, but never properly addressed or resolved. “We actually tried to solve this problem in 1990. I was on a team detailed to Washington D.C. and we had come up with policy and sent it out for comment. Before it could be implemented it was S*** canned by a recent change in management personnel that was not heritage minded” (McLeod, Milo, personal communication 3 March 2009).

The Wilderness Act of 1964, the National Historic Preservation Act of 1966 and other legislation can only do so much. “Neither act supplants or replaces the other and

the challenge to the Forest Service is to meet our responsibilities under both in a sensitive, thoughtful and informed manner” (Beckes 1994, p.1). Agencies need to have a clear understanding of how they are going to abide by the governing legislation and analysis of the current situation has identified the lack of a strong, agency specific management position. This need for new policy made this paper possible since it is designed to surface elements of policy needing attention.

Wildernesses across the United States attract numerous visitors every year. Within these areas, it is understood that humans are visitors. The Wilderness Act of 1964 defines wilderness in section 2 (c) as,

in contrast with those areas where man and his works dominate the landscape, [wilderness] is hereby recognized as an area where the earth and its community of life are untrammelled by man, where man himself is a visitor who does not remain... ..an area of undeveloped Federal land retaining its primeval character and influence, without permanent improvements or human habitation, which is protected and managed so as to preserve its natural conditions....which (4) may also contain ecological, geological, or other features of scientific, educational, scenic, or historical value.” Further, section 4 (b) states, “wilderness areas shall be devoted to the public purposes of recreational, scenic, scientific, educational, conservation, and historical use.

Of particular interest in this paper is the presence of historic structures in wilderness areas.

Historic structures in wilderness include structures such as lookout towers, ranger stations, mining cabins, barns, fire caches, bridges, dams, Adirondack shelters, fences, canals, kilns and trails. As defined by The National Park Service’s National Register Bulletin (1997),

The term “structure” is used to distinguish from buildings those functional constructions made usually for the purposes other than creating human shelter. A building, such as a house, barn, church, hotel, or similar constructions, is created principally to shelter any form of human activity. “Building” may also be used to refer to a historically and functionally related unit, such as a courthouse and jail or a house and barn (p.4).

For the purposes of this paper, the term “structure” will include buildings. Some of these structures are used currently for administrative purposes by the Forest Service, and these administrative structures seem to be acceptable to the agency in contrast to other structures.

It is probably the thing I like about wilderness cabins is that it’s the highest and best use of a historic structure. They are used exactly like they were historically.

When you go into the cook house, it's still the cook house. When you go into the bunkhouse, it is still a bunkhouse. You still have mules and horses in the barn. It is the purest use of a historic building out there. The argument I make with wilderness people is that all the work they are doing in the wilderness is historic preservation. If they are working on a trail, they may reroute a short section, but they are maintaining a trail that has been there for, on most Forest Service trails a lot of them are about 100 years old. So they are actually doing historic preservation, whether they think so or not (Respondent L).

Any of these structures approaching 50 years of age is to be examined for its historic significance to be eligible for listing on the National Register of Historic Places. The 50 year age minimum was chosen as a reasonable span of time to make professional evaluation of historic value feasible and to ensure that structures receiving financial benefits from being listed are truly historic, rather than contemporary (Sherfy and Luce 1998). The Wilderness Act of 1964, the so- called Eastern Wilderness Act of 1975, Forest Service Policy, the National Historic Preservation Act of 1966, the Advisory Council on Historic Preservation, the National Register of Historic Places, and the Secretary of the Interior's Standards for Rehabilitation provide guidance to ensure that the historic integrity of structures and natural resources in wildernesses are not compromised. Still, despite current legislation and agency policy, gaps are still present regarding the management of historic structures in wilderness.

One administrative gap is the lack of reference to continued monitoring or evaluation of structural conditions by Forest Service employees. After an area is designated as wilderness, Forest Service policy calls for an inventory of natural and cultural resources. Employees working in the backcountry often do an informal evaluation of administrative buildings since they spend the most time at these sites and are responsible for their care and every now and then they will do a check of non-administrative use sites if they are in the area.

Upon completion of an initial inventory, historic structures are evaluated and then seem to be placed on the back burner for various reasons. One reason for this lack of attention might be the more pressing nature of other management issues. Another way attention is taken away from historic structures is clear as to what are the specific management responsibilities or who has specific authority, except for the authority outlined in current policy naming positions such as Chief or Regional Forester. Section

2324.04a of the Forest Service Manual grants the Chief of the Forest Service authority to approve, “Replacement or major rehabilitation of Forest Service facilities at administrative sites and construction of buildings for cooperating agencies that have responsibilities within National Forest Wilderness.” Similarly under sections 2324.04(b) and 2324.04(c) of the manual, Regional Foresters and Forest Supervisors may be able to approve construction of specific structures. Regional Foresters can approve construction of new fire lookouts, and pending revisions to policy would allow them to, “Approve the rehabilitation, replacement, or construction of structures or facilities expressly authorized by designating legislation subsequent to the Wilderness Act.” Forest Supervisors may only authorize reconstruction of existing fire lookouts. No new structures, except temporary shelters in Alaska, are to be constructed in wildernesses except, “as may be necessary in the control of fire, insects, and diseases, subject to such conditions the Secretary deems desirable,” as stated in Section 4 (d) of the Wilderness Act (Appendix A). Current Forest Service policy also outlines the following steps to be taken:

- Identifying and Evaluating
- Formulating Management Prescriptions, i.e. Restoration, Preservation, Stabilization or release from management
- Implementing Management Decisions
- Determining Eligibility for National Register of Historic Places
- Mitigating Effects
- Providing Public Access
- Interpretating
- Monitoring
- Retaining Historic Structures
- Disposing of Historic Structures

Another management issue is that there is not to be any permanent evidence of humans in wilderness, yet the presence of historic structures could encourage development of new structures in existing administrative areas. Section 4 (c) of the Wilderness Act clearly states under the heading Prohibition of Certain Uses that, “no structure or installation within any such area” shall take place. The one clear exception to this prohibition comes under the Alaska National Interest Lands Conservation Act of

1979. This Act allows for new structures to be built in wilderness for the means of supporting the lives and livelihoods of the rural residents residing in these areas of extreme climate conditions.

Problems have arisen because some managers have interpreted the existence of structures as giving license for more development. For example a manager at one wilderness ranger station responded that because there are already structures present, rebuilding a collapsed woodshed would not hurt. However, as Respondent H explains, even this minor woodshed construction should go through the proper channels.

The District has their backcountry site; the actual Station has probably about 10 structures. One winter the woodshed collapsed. They essentially made the decision, without going through any kind of analysis; they made the decision to rebuild the woodshed. That's not what they should have done. What they should have done was, if they lose a structure, then they need to go through the minimum requirement, minimum tool analysis to determine whether or not that structure is the minimum necessary to administer the areas wilderness. I would have questioned that having a woodshed is the minimum necessary. That's the kind of process and analysis that the forest needs to go through every time prior to building any new structure.

Without clear guidance, as is shown in this example, some people will advocate development in areas where historic structures are present since the site is technically developed already. Such developments might not be extreme; they could be in the form of sheds, weather stations, or shelters, but they are developments and the cumulative effort of seasonal small developments could be damaging to the character of the site in terms of natural resources and the historic site.

A somewhat similar situation is the desire to rebuild a listed structure if it is somehow lost. Logically and technically, however, once the structure is gone, all of its historic value is gone and cannot be recaptured. One might propose to replicate one historic structure, but the new structure is not historic and thus impermissible in wilderness. There is a big difference between maintenance and replacement, but this difference is not always recognized.

Another issue deals with maintenance of historic structures. Those buildings that are identified as the minimum necessary to administer wilderness need proper maintenance. There needs to be an understanding by all employees that while historic structures need special care, maintenance is not a daunting task if it can be done while the

issue is still small. That is, maintenance problems should be taken care of before they snowball into larger, structural problems. A lot of misconceptions can be righted with a basic knowledge of terms differentiating maintenance from replacement. Maintenance is the ongoing care of a structure to maintain its character and integrity. Integrity refers to how close the structure is to its original condition thereby conveying its significance (importance and meaning) to people in the present (Hardesty and Little 2000).

Replacement of a structure is a large scale substitution of what was present originally. All original features are gone and new ones put in their place. The physical aspects of a structure are relatively easy to replace, but the associated integrity and significant story can never be replaced. Understanding that ‘replacement’ or ‘maintenance’ cannot be used as blanket terms when referring to historic preservation work will help to ensure that the biological integrity of wilderness areas and the integrity of cultural resources within them are maintained. Clarifying the various degrees of work that make up historic preservation projects will give those not familiar with heritage work a clearer view of what that work entails. Then they can have a better picture in their minds of the scale of projects and how those projects may temporarily impact the surrounding area.

In dealing with these and other issues regarding historic structures in wildernesses, the Forest Service must take into account different interpretations from many different groups, both internally and publically, of how wildernesses should be managed. Different philosophies have driven and are still driving debates about wilderness and cultural resources. Why are both heritage and wilderness important resources? Examining why each of these are important to the agency and the public will help us understand the logic behind management decisions and indeed help develop a national policy for managing historic structures in wilderness.

Why are historic structures important as wilderness resources, contributing to the character and human experience?

Historic structures are important to people because they represent major patterns of shared local, state and national experiences (National Park Service 1997). The issue at hand is not just about preserving a physical structure. It is about preserving survival techniques and representing a way of life of humans. Inheritance of these techniques for

future generations will ensure that there will be qualified crafts people to conduct work on historic structures necessary for a piece of American heritage will live on.

Structures within wilderness represent both societal experiences and the historical culture of the Forest Service. These past human experiences combined with natural elements have shaped the areas within which people like to recreate today. As Lipe (2002), explains, “Things of the past can serve as a tangible bridge between the visitor’s experience and a past world reconstructed from numerous lines of evidence” (p.22). By adding the contributions of historic resources to the ecological contributions of wilderness one can realize a rich collective human experience.

Do all structures need to be saved? Of course not; that would be unrealistic. Stumbling upon structures that nature is reclaiming adds another positive element to the wilderness story. As Roenke (1998) states, “It is the prehistory and history of a natural landscape that provides a factual basis upon which sound, defensible management plans can be developed” (p.77). Further, accounts of the past are anchored in the physical reality of the traces and remains left by real people in a real past (Lipe, 2002). From the time the Wilderness Act and the National Historic Preservation Act (Appendix B) were implemented up until the 1980s, the most extreme pristine view of the wilderness was the dominant view held by many Forest Service employees. In trying to figure out how to properly manage this new mandate called “Wilderness”, there was a rush to clear as much evidence of man as possible.

They [wilderness employees] pretty much didn’t feel that the National Historic Preservation Act was something that needed to be considered. They felt that the Wilderness Act and their idea what they wanted the wilderness to be rose above that (Respondent G).

I can say that when I was in Region 6, when I got there, most of our historic structures had been burned down already in wilderness. They just took a torch to everything as soon as they [wilderness areas] were designated. In fact, I’m sitting here looking at a picture of a lookout that was built in 1929 in the wilderness that I worked in, in Region 6. It was burned down in 1966 (Respondent H).

At that time we were still burning a lot of buildings and supposedly ‘cleaning up’. In the early to mid 1980’s we lost a lot of historic buildings in wilderness areas (Respondent L).

The main ideological conflict, especially in the years right after the passage of the Wilderness Act, stems from existing evidence of human activity in areas that society wants to hold to the highest of natural resource management standards. While there are no large disagreements with this goal, it seems unrealistic and harmful to both wilderness and historic structures to try to erase part of the landscape story. Technically speaking, one would have to go back thousands of years with a fine tooth comb to find a landscape that has not been affected by man. As Cronon (2003) has noted, “It [National Lake] is a storied wilderness” (p.42). By saving and recording examples of human activity in wilderness we can actually better understand the environment before us and our relationships to that environment. Briggs et al. (2006), explains, “To better understand human-environmental relations, we must therefore document both the choices that people made and the factors that influenced those choices” (p.1). “Because wilderness designation is defined and created by humans, wildernesses are in fact a cultural landscape for which we have developed a management prescription” (Potts, 2007, p.6). “Wilderness needs a few good anthropologists” (Foreman, 1998, p.403) to better understand it and that its historical use is now part of its character.

Why is wilderness important?

The importance of Wildernesses is related to the meanings people place upon it. Wildernesses are an invaluable resource to biota and society. These large protected areas are important for biologic life because habitat is large and diverse for flora and fauna. They are important for humans in terms of continuing cultural traditions, aesthetic value, and active experiences to those who wish to test themselves to their limits. People do not have to set foot in wilderness to appreciate it. Just knowing it is there is enough for some members of society. These areas also are important because they reflect part of what our country is about, personal freedom and diversity. Indeed wilderness by definition could be considered a cultural landscape. The Forest Service Manual (2364.41f) defines,

A cultural landscape as a geographic area, including both cultural and natural resources and the wildlife or domestic animals therein, associated with a historic event, activity, or person or exhibiting other cultural or aesthetic value. A cultural landscape may be a valley bottom rich in prehistoric American Indian rock art or a mountain pass that was the scene of continuous human travel for thousands of years.

These values, natural and cultural, can all be found within wilderness, even if only subtly. The following paragraphs illustrate not only these important values of wilderness to society, but also the resulting dichotomy managers face.

Wild is keenly sensual and individualistic (Turner 1996). Ask twenty people what Wilderness represents to them and twenty different answers will be given. Wilderness allows people the freedom to relate their own important qualities of life in a way different from anything else. “Wilderness represents symbolic environments that confer meaning onto us as individuals. Therefore, through experiences in wilderness and the construction of long-term meaning, people build ongoing relationships with wilderness areas” (Dvorak and Borrie 2007, p. 13). The symbolic debate about wilderness is a double-edge sword that will always be around. Wilderness has taken on so many meanings such as barren, holy, paradise, unknown, scary, humbling, humans are a part of, separate from humans, and so on, that it is hard to characterize. Nature has been transformed from the environment we survive in to a place that allows us to visit. This separation results in society viewing nature as a place to imagine, visit, preserve and protect (Roenke 1999). Wilderness is not a place to view as a home, but rather as a destination (Roenke 1999). Perhaps to some, viewing evidence of human activity in wilderness represents every sin committed by man, thus allowing nature to “rewild” itself is a huge win against mankind. While “rewilding” wilderness is good biologically and philosophically, any evidence of man does not necessarily mean doom and gloom.

To acknowledge past human impacts is not to call into question their wildness; it is rather to celebrate along with the human past, the robust ability of wild nature to sustain itself when people give it the freedom it needs to flourish in their midst (Cronon 2003, p. 38)

Discussion about interpretation of wilderness is good because it creates a dialogue between different groups and encourages personal thought. However, on the downside, groups can take their passion to the extreme and completely close off any information, good or bad. As Cole (2007) discussed, “Inadequate understanding of an attention to symbolic values is problematic because society needs to dialogue and deliberate about the relative importance of different wilderness values” (p.23). Foreman (2000) is correct in his belief that wildernesses were designated to prevent destruction of untrammelled places and to help ecosystems become self-regulated again. But, recreation,

aesthetic value and scientific endeavors also have played a role in wilderness designation. Conversely, management decisions likely should not be made on sentiment alone. Managers relying on sentiment and myth can actually do harm. “If we base our actions on myth, or erroneous history, we are on a course destined to fail. If we base decisions on environmental historical facts we can defend our actions, gain public understanding and trust and perhaps avoid some legal battles” (Roenke 1998, p.77). As Respondent G shares,

I think myths play a big part of people's perceptions of things. I have had a number of eastern wilderness people in Region 9 who haven't been out west, who haven't worked out there, say the Selway-Bitterroot is a pristine wilderness. I say, 'You are wrong there because it was a working national forest, the Selway National Forest, for over 20 years.' Then they get a big long look on their face because they are either not doing good research to even know what they are talking about or they are using myths.

The task at hand for Forest Service managers is to find balance between the legislation and the diverse interpretation of some of the purposely ambiguous language of the legislation, because in the end managers are managing a physical place.

Where do we go....

The Forest Service is challenged to understand the many interpretations from many different groups, both internally and publically, of how wilderness area resources can be managed effectively. What components make up the character of wilderness? Should there be representation of human existence, or should the illusion of an untouched landscape dominate? The ideological debate between a purist landscape and past human influence not being represented in wilderness has gone on long enough. Attention should be beyond whether or not structures should be in wilderness. What these structures represent compliments, rather than impedes upon the wilderness story.

As the following chapters will show, federal legislation states cultural resources, including historic structures, do contribute to the overall character of wilderness. While wilderness character benefits from the presence of historic structures, historic structures benefit from wilderness. That is, by having historic structures present in wilderness, visitors are able to view the structures in their historic context. The historic context of a property can be identified through consideration of the history of the property and the

history of the surrounding area (National Park Service 1997). The patterns or trends in which a specific property or site is understood and its meaning within history or prehistory is made clear (National Park Service 1997). Visitors viewing working administrative sites or coming across a non-administrative structure in wildernesses can develop a story line in their mind to fully understand how the structure interacts with its surroundings. They can visualize themselves in the situation to appreciate these sites not as a piece of history that is being preserved behind velvet ropes, but as a collective experience.

In addition, this paper will also show that as a whole the employees of the Forest Service recognize historic structures and wilderness can complement each other, but there are certain elements in addition to the ideological debate making their job more difficult than it should be.

Despite federal legislation directing the agency to protect both resources, it is left up to the agency to determine how they achieve that goal. *“Just because federal law says that you have to do it does not tell you how you have to do it or how you want to interpret that” (Respondent F)*. Administrative policy is needed to give direction to agency efforts. Therefore, the following chapters identify methods used to uncover where the Forest Service can improve their stewardship, discuss and analyze the resulting data and present specific suggestions for agency consideration.

CHAPTER 2 – REVIEW OF LEGISLATION

If the topic of historic structure management in wilderness is being discussed, so are the National Historic Preservation Act of 1966 and the Wilderness Act of 1964 (Full text of each Act are found in Appendices A and B). It is the legal responsibility of the Forest Service to proactively abide by both. These acts have more in common than people often think. Both of these acts are products of a preservation minded federal government. Both are testament to the government stating that there are resources important enough for the good of current and future generations. Both were purposefully written in a manner that guides, yet leaves room for many interpretations of meaning and compliance. Even though these two acts are the most prevailing acts used for the management of cultural resources in wilderness, there are also a few other acts that contribute to the issue such as ANICLA, the Archaeological Resource Protection Act of 1979, The Secretary of Interior's Standards for Rehabilitation, and the Minimum Requirements analysis. A review of these laws will show that none are above another. All of them work towards the protection of natural and cultural resources.

Cultural resources are not just bits of history or artifacts. King (2004) explains cultural resources can be narrowly defined as archeological sites or historic properties, but he further defines cultural resources as, "Any resource that is of a cultural character. Examples of such resources are social institutions, historic places, artifacts and documents" (p. 361).

Francis McManamon (2002) illustrates the distinction between heritage and history as, "History [and archaeology] explore and explain pasts grown ever more opaque over time; heritage clarifies pasts so as to infuse them with present purposes" (p.3). A 'property' is a district, site, building, structure, or object that is included on, or is eligible for, the National Register of Historic Places (King 2003, p.12). A 'site' is the location of a significant event, a prehistoric or historic occupation or activity, or a building or structure, whether standing, ruined, or vanished, where the location itself possesses historic, cultural, or archeological value (National Park Service 1997, p.5). For the purpose of this paper, historic structures in wilderness represent historic and heritage properties or sites that allow visitors in wilderness a way to see how the heritage of human actions influenced today's land and society.

The Wilderness Act of 1964

The Wilderness Act of 1964 provides for the management of natural resources, but also accommodates cultural resources. As the act states (emphasis added) in Section 2(a),

*.....leaving no lands designated for preservation and **protection in their natural condition, it is hereby declared to be the policy of the Congress to secure for the American people of present and future generations the benefits of an enduring resource of wilderness.** For this purpose there is hereby established a National Wilderness Preservation System to be composed of federally owned areas designated by Congress as "wilderness areas", and these shall **be administered for the use and enjoyment of the American people in such manner as will leave them unimpaired for future use and enjoyment as wilderness, and so as to provide for the protection of these areas, the preservation of their wilderness character, and for the gathering and dissemination of information regarding their use and enjoyment as "wilderness areas.***

The definition of wilderness that Congress laid out is debated and interpreted in different ways due to the purposefully general language used. Hendee and Dawson (2002) reinforce that it is the responsibility of the agencies managing wilderness to implement detailed guidelines in their respective departmental regulations, because the Wilderness Act only provides primarily broad guidance. The previously outlined definition of Wilderness according to Congress illustrates that these areas are set apart from other land areas in terms of the golden ring for which managers strive. These areas are managed for the resources within in order for future generations to have the opportunity to use and enjoy them. Wilderness are also managed for preservation of the character that all of those resources portray in the definition of wilderness. As Section 2 (c) further explains,

*A wilderness, **in contrast with those areas where man and his works dominate the landscape,an area of wilderness is further defined to mean an area of undeveloped Federal land retaining its primeval character and influence, without permanent improvements, or human habitation, which is **protected and managed so as to preserve its natural conditions and**** which (1) generally appears to have been affected primarily by the forces of nature, with the imprint of man's work substantially unnoticeableand (4) may also contain ecological geological, or other features of scientific, educational, scenic, or **historical value.***

With regard to historic structures in wilderness, most blend into the landscape and new structures, except in special instances, are not allowed on a permanent basis. Conducting preservation of a historic structure is not a permanent improvement. While it is extending the life of a structure, 20 plus years down the road natural elements will affect the natural materials in a way that they will need to be examined again. If Congress thought the presence of historic structures impeded upon the primeval character of the land, then they would either not designate the area as wilderness or stimulate that the structures absolutely need to be removed. However, unreasonably ridged admission standards were not the intent of Congress (Hendee and Dawson 2002). These stipulations help to assure that the wilderness character will not be dominated by the presence of man, but allow for the presence of features with historic merit to individuals or groups which the agency is also responsible for preserving. Section 4(b) explains,

*Each agency administering any area designated as wilderness shall be **responsible for preserving the wilderness character of the area**.... Except as otherwise provided in this Act, **wilderness areas shall be devoted to the public purposes of recreational, scenic, scientific, educational, conservation and historical use.***

Even though the character of an area can be defined by its recreational, educational and historical use, a challenge is still presented because the definition of wilderness character can be as broad as the definition of wilderness.

Landres et al. (2005) realized that even though the character of wilderness varies from area to area, there are four constant qualities for monitoring wilderness character. These qualities are untrammeled, natural, undeveloped and the opportunity for primitive or unconfined recreation. All of these qualities combined with the language of the Wilderness Act illustrate that when a person is in a wilderness area, nature dominates over human presence. That is, untrammeled, natural, undeveloped and primitive mean that wildernesses are **essentially** without human presence (Landres et al 2005). This means that even though the natural features outshine any human control, there can still be small examples of past human use of the area represented. This representation of human use is not only in the historical sense, but also in the present recreational and educational uses that these areas are in part devoted to. These uses are also provided for in administrative wiggle room. The Act in Section 4 (c) outlines,

*Except as specifically provided for in this Act.....and **except as necessary to meet minimum requirements for the administration of the area** for the purpose of this Act, including measures required in emergencies **involving the health and safety of persons within the area**, there shall beno structure or installation within any such area.*

In addition, Section 4(d)(4) states,

*Within wilderness areas in the national forests designated by this Act, (1) the President may authorize.....**the establishment and maintenance of...other facilities needed in the public interest**, including the road construction and maintenance essential to development and use thereof, upon his determination that such use or uses in the specific area will **better serve** the interests of the United States and the people thereof than will its denial.*

If an action is the minimum necessary to manage the area as wilderness, administrators are allowed to carry out actions otherwise considered inappropriate in wilderness.

However, the burden is on the administrators to prove that the action is indeed the minimum necessary to carry out management of wilderness (Hendee and Dawson 2002).

In these exceptions, any installation of facilities such as bridges must be necessary for health and safety of the persons in the area and not for convenience or comfort of users (Hendee and Dawson 2002). While there may be some uses of wilderness that are nonconforming to the overall protection goal of wilderness, they are allowable compromises in order for Wilderness Bills to be passed (Hendee and Dawson 2002).

Evidence of past human influence in wilderness does not represent an urban encroachment or domination by man and his works, but rather it represents a story of human attempts to exist in difficult surroundings. One example of Wilderness and Heritage have finding some common ground is in Alaska.

The Alaska National Interest Lands Conservation Act of 1980

In order for rural residents to survive and provide for their families, this act provides for the subsistence living in wilderness areas due to extreme conditions found in Alaska. Even though it allows for new structures to be constructed, its wilderness section recognizes historic structures as a contributor to the wilderness character. Section 1303 (c) allows that existing cabins, “within wilderness designated by this Act, may be permitted to continue and may be maintained or replaced subject to such restrictions as the Secretary deems necessary to preserve the wilderness character of the area”. The

Alaska National Interest Lands Conservation Act, while acknowledging the different circumstances found in Alaska wildernesses, represents Congress' progression of intent and concerns regarding management of wilderness.

Section 1315 states,

The provisions of this section are enacted in recognition of the unique conditions in Alaska. Nothing in this section shall be construed to expand, diminish, or modify the provisions of the Wilderness Act or the application or interpretation of such provisions with respect to lands outside of Alaska... (d) NEW CABINS.— Within wilderness areas designated by this Act the Secretary or the Secretary of Agriculture as appropriate, is authorized to construct and maintain a limited number of new public use cabins and shelters if such cabins and shelters are necessary for the protection of the public health and safety. All such cabins or shelters shall be constructed of materials which blend and are compatible with the immediate and surrounding wilderness landscape.

The act further recognizes the contributions of cultural resources in wilderness under section 1318,

In furtherance of the national policy set forth in the first section of the Act entitled "An Act to provide for the preservation of historic American sites, buildings, objects, and antiquities of national significance, and for other purposes", approved August 21, 1935 (49 Stat. 666), and in furtherance of the need to protect and interpret for the public benefit cultural and archeological resources and objects of national significance relating to prehistoric and historic human use and occupation of lands and waters in Alaska, the Secretary may provide advice, assistance, and technical expertise to the applicant in the preservation of buildings, facilities and interpretive displays for the public and personnel to train individuals in the identification, recovery, preservation, demonstration, and management of cultural resources.

This act shows that the heritage associated with past human acts can still coexist with today's society without that human influence overriding the wilderness character.

National Historic Preservation Act of 1966

The National Historic Preservation Act of 1966 provides all federal agencies with stewardship responsibilities for historic properties under their jurisdiction (National Trust for Historic Preservation 2008). In Section 1 Congress declared,

(1) the spirit and direction of the Nation are founded upon and reflected in its historic heritage; (2) the historical and cultural foundations of the Nation should be preserved as a living part of our community life and development in order to give a sense of orientation to the American people.....(7) although the major burdens of historic preservation have been borne and major efforts initiated by

private agencies and individuals, and both should continue to play a vital role, it is nevertheless necessary and appropriate for the Federal Government to accelerate its historic preservation programs and activities, to give maximum encouragement to agencies and individuals undertaking preservation by private means, and to assist State and local governments and the National Trust for Historic Preservation in the United States to expand and accelerate their historic preservation programs and activities.

Specifically referring to the policy obligations of federal agencies Section 2 directions,

(1) use measures, including financial and technical assistance, to foster conditions under which our modern society and our prehistoric and historic resources can exist in productive harmony and fulfill the social, economic, and other requirements of present and future generations; (2) provide leadership in the preservation of the prehistoric and historic resources of the United States and of the international community of nations and in the administration of the national preservation program in partnership with States, Indian tribes, Native Hawaiians, and local governments; (3) administer federally owned, administered, or controlled prehistoric and historic resources in a spirit of stewardship for the inspiration and benefit of present and future generations.

Section 106 of the National Historic Preservation Act states,

The head of any Federal agency having direct or indirect jurisdiction over a proposed Federal or federally assisted undertaking in any State and the head of any Federal department or independent agency having authority to license any undertaking shall, prior to the approval of the expenditure of any Federal funds on the undertaking or prior to the issuance of any license, as the case may be, take into account the effect of the undertaking on any district, site, building, structure, or object that is included in or eligible for inclusion in the National Register. The head of any such Federal agency shall afford the Advisory Council on Historic Preservation established under Title II of this Act a reasonable opportunity to comment with regard to such undertaking.

Despite popular belief, Section 106 of The National Historic Preservation Act is not about preserving every cultural resource all of the time. As King (2004) explains,

It is about accommodation, compromise, and seeking win-win solutions to conflicts between historic preservation and other public interests. The regulations [36 CFR 800] articulate the purpose of the process rather succinctly: The section 106 process seeks to accommodate historic preservation concerns with the needs of Federal undertaking through consultation among the agency official and other parties with an interest in the effects of the undertaking on historic properties, commencing at the early stages of project planning (p. 86).

The National Historic Preservation Act seeks to not only accommodate the historic resources, but also the natural as well. For example, section 106 seeks to consider the

area of potential effects of an undertaking on Secondary physical effects (erosion), Visual effects (will the effects be visible), Auditory effects (will noise, if any be audible), Sociocultural effects (land use, quality of life), and effects on culturally significant natural resources such as plants or animals (King, 2004, p.97). The most proactive direction for The Forest Service and other agencies is found in Section 110 of the National Historic Preservation Act. Section 110 declares (emphasis added),

*(a) (1) The heads of **all Federal agencies shall assume responsibility for the preservation of historic properties which are owned or controlled by such agency.** Prior to acquiring, constructing, or leasing buildings for purposes of carrying out agency responsibilities, each Federal agency shall use, to the maximum extent feasible, historic properties available to the agency in accordance with Executive Order No. 13006, issued May 21, 1996 (61 Fed. Reg. 26071). Each agency shall undertake, **consistent with the preservation of such properties and the mission of the agency and the professional standards established pursuant to section 101(g) of this Act, any preservation, as may be necessary to carry out this section.** (2) Each Federal agency shall establish, in consultation with the Secretary, a preservation program for the identification, evaluation, and nomination to the National Register of Historic Places, and **protection of historic properties.** Such program shall ensure — (A) that historic properties under the jurisdiction or control of the agency, are identified, evaluated, and nominated to the National Register; (B) that such properties under the jurisdiction or control of the agency as are listed in or may be eligible for the National Register **are managed and maintained in a way that considers the preservation of their historic, archaeological, architectural, and cultural values in compliance with section 106 of this Act and gives special consideration to the preservation of such values in the case of properties designated as having National significance;**(E) that the agency's procedures for compliance with section 106 of this Act — (i) are consistent with regulations issued by the Council pursuant to section 211 of this Act; (ii) provide a process for the identification and evaluation of historic properties for listing in the National Register and the development and implementation of agreements, in consultation with State Historic Preservation Officers, local governments, Indian tribes, Native Hawaiian organizations, and the interested public, as appropriate, regarding the means by which **adverse effects on such properties will be considered;**....(b) **Each Federal agency shall initiate measures to assure that where, as a result of Federal action or assistance carried out by such agency, an historic property is to be substantially altered or demolished, timely steps are taken to make or have made appropriate records, and that such records then be deposited, in accordance with section 101(a) of this Act, in the Library of Congress or with such other appropriate agency as may be designated by the Secretary, for future use and reference.***

This directs federal agencies to take the lead on positively establishing measures for the management of cultural resources on their lands.

While Section 106 and 110 are the two most recognized sections of the National Historic Preservation Act, there is one more section that is applicable for the purpose of this paper. Section 112, directs,

*(a) Each Federal agency that is responsible for the protection of historic resources, including archaeological resources pursuant to this Act or any other law shall ensure each of the following — (1) (A) **All actions taken by employees or contractors of such agency shall meet professional standards under regulations developed by the Secretary in consultation with the Council, other affected agencies, and the appropriate professional societies of the disciplines involved, specifically archaeology, architecture, conservation, history, landscape architecture, and planning.***

This section is important because it is steering the agency employees to take pride and hold their work to the highest possible professional standards such as those identified by The Secretary of the Interior.

The Secretary of the Interior's Standards for Rehabilitation defines rehabilitation as, "the process of returning a property to a state of utility, through repair or alteration, which makes possible an efficient contemporary use while preserving those portions and features of the property which are significant to its historic, architectural, and cultural values." Rehabilitation is broken down into four categories: Restoration, Preservation, Stabilization and Release from Management, with restoration being the most significant undertaking. Current Forest Service policy defines these categories as follows:

- Restoration-the act or process of accurately recovering the form and details of a property and its setting as it appeared at a particular period of time by means of the removal of later work or by the replacement of missing earlier work.
- Preservation- the act or process of applying measures to sustain the existing form, integrity, and material of a building. It may include initial stabilization work, where necessary, as well as ongoing maintenance of the historic building materials.
- Stabilization- the act or process of applying measures designed to reestablish a weather resistant *enclosure* and the structural stability of an unsafe or deteriorated property while maintaining the essential form as it exists at present.
- Release from Management- the act or process of declaring a historic structure to be incompatible with its setting and of insufficient historic value to be

essential to the purposes of wilderness as defined in section 4 (b) of the Wilderness Act of 1964.

Archaeological Resources Protection Act of 1979

Another contributing piece of legislation is the Archaeological Resources Protection Act of 1979. This act improved upon the Antiquities Act of 1906, which was the first legislation drafted for the protection of the Nation's cultural resources. However, this four paragraph document from 1906 was severely outdated by 1979. Applying to all Federal lands, the Archaeological Resources Protection Act, Congress found,

(1) archaeological resources on public lands and Indian lands are an accessible and irreplaceable part of the Nation's heritage; (2) these resources are increasingly endangered because of their commercial attractiveness; (b) The purpose of this Act is to secure, for the present and future benefit of the American people, the protection of archaeological resources and sites which are on public lands and Indian lands, and to foster increased cooperation and exchange of information between governmental authorities, the professional archaeological community, and private individuals having collections of archaeological resources and data which were obtained before October 31, 1979 [the date of the enactment of this Act] Section 3 (As used in this Act—) (1) the term "archaeological resource" means any material remains of past human life or activities which are of archaeological interest, as determined under uniform regulations promulgated pursuant to this Act. Such regulations containing such determination shall include, but not be limited to: pottery, basketry, bottles, weapons, weapon projectiles, tools, structures or portions of structures, pit houses, rock paintings, rock carvings, intaglios, graves, human skeletal materials, or any portion or piece of any of the foregoing items. No item shall be treated as an archaeological resource under regulations under this paragraph unless such item is at least 100 years of age.

With regards to historic structures, this section is important to that in order to be considered an archaeological resource, a structure or building must be at least 100 years of age, rather than the 50 year requirement for listing on the National Register of Historic Places. Therefore, some historic structures in wilderness areas may qualify both as being historically significant and archaeological resources, opening the umbrella of responsible stewardship even more.

Minimum Requirement

Federal agencies must take into account all of the above legislative declarations and marry them with the *Minimum Requirement Decision Guide* as prescribed by The Wilderness Act. *The Minimum Requirement Decision Guide*, compiled by the Arthur Carhart National Wilderness Training Center explains, “This guide is provided to assist managers in making appropriate decisions about their administrative actions in wilderness. The guidance comes from the Wilderness Act, agency policies, and the experience of 35 years of wilderness management” (p.1).

This guide has been developed to help provide consistency to the way project proposals in wilderness are evaluated and to ensure that we constantly strive to maintain or improve wilderness character through the decisions that are made. The information in this guide needs to be accompanied by a clear understanding of wilderness values and the ability to translate that understanding to a variety of complex and/or difficult projects in wilderness. The guide is not a NEPA document, decision document or policy, but rather a series of self explanatory worksheets designed to assist in thinking through and/or documenting analysis. The worksheets include a two step minimum requirements analysis: first, to determine if the project or activity proposed is the minimum necessary for administration of the area for the purpose of the Act, and second, to determine which tool(s) will have the least impact to the wilderness resource. The worksheets lead the wilderness manager through a series of questions to provoke thought and understanding about the necessity of the proposed project and the most appropriate tools to use. The minimum requirements analysis is provided to stretch our imaginations for the least impactful way of administering the wilderness (p.2).

The worksheets are aimed at confirming an action is really the minimum required undertaking by covering the following topics: Rational, effects on wilderness character, alternative approaches, social/recreation/experiential effects, social/political effects, health and safety concerns and economic timing (p.4-10).

The discussion of the legislation described above shows that as written, none of Acts supersede or out-right conflict with one another. While there is room for interpretation in some of the purposefully used language of these Acts, each does possess clear language regarding the coexistence of historic structures in wilderness areas and their management by federal agencies like the Forest Service.

CHAPTER 3 - METHODOLOGY

“What we call our data are really our own constructions of other people’s constructions of what they and their compatriots are up to” Clifford Geertz (Surber 1998, p.64).

Approach

The purpose of this chapter is to outline the approach taken to address the subject of how the Forest Service manages historic structures within wildernesses and how that management can be improved. A qualitative approach has been used because it allows for the topic to be explored in-depth by the investigator. Most importantly, the approach used for this study allowed the researcher to accumulate data that were high in validity. As Bernard (2002) states, “Validity refers to the accuracy and trustworthiness of instruments, data, and findings in research. Nothing in research is more important than validity” (p.49). As Forest Service employees are the front line for the interaction of historic structures and wilderness, asking Forest Service employees about agency policy and their experiences while working within the Forest Service represents a valid way to assess current policy and its limitations. Therefore, if the instruments and data are valid, the conclusions derived from the data should be valid and we should gain a good understanding of how to improve policy (Bernard 2002).

The process began by searching journal articles, Forest Service national and regional policies, Forest Service publications, federal legislation, court cases and additional written material. After review of available documents and development of a better understanding of potential issues, a semi-structured, in-depth interview questionnaire guide was developed (Appendix C). This particular style of interviewing allows the investigator to adapt questions to the thoughts and expressions of the interviewee. Through it a niche body of information is developed allowing the interpreter to explore possible interpretations of meaning. The questions themselves were specific, yet left room for additional probing questions from the investigator or information to be offered from the respondent. The questions focused on the employees perceptions of how well the Forest Service was able to meet its legal obligations, if they felt the Forest Service was living up to the standards they set for themselves in their policy, and individual experiences resulting in the day to day management of historic structures in wilderness. Focusing the questions on these subjects allowed the investigator to

document how the Forest Service has either improved, or not improved, its practices and attitudes toward historic structures and wilderness resources coexisting. The structure of the questions allowed for flexibility of subject matter. That is, if the respondent gave an answer that corresponded to questions later on the list, the interviewer could jump to that line of questioning, and then direct it to another line easily without causing confusion. The goal was to have the interviews be conversational and relaxed.

Study Respondents

In total, 20 employees from various levels and departments of the Forest Service were interviewed about personal experiences, Forest Service policies and regulations and Federal laws such as the Wilderness Act and National Historic Preservation Act. In order to gain a wide range of information from employees across the country and at various levels of the Forest Service, 20 respondents were deemed to be an appropriate representation, and for the time frame of this study. The final respondent list was comprised of Forest Service specialists in the areas of Wilderness, Heritage and Recreation at the Forest, District, Regional, and National levels. The respondents were chosen in three different ways: 1) Examining the internal Forest Service Personnel Directory identifying people based on position title and geographic location, 2) known personal contacts, and 3) referrals from other study participants. The twenty respondents that participated have spent their career on the front line of this issue, doing the work and making the decisions, thus providing valuable insight into the day-to-day management of historic structures in wilderness.

The Interview

The purpose of the interviews was to discover what Forest Service employees in the Heritage, Recreation and Wilderness programs thought about Historic Structures in wilderness, about relevant policies and their implementation, and about management issues and the opportunity to improve management. Given the small number of interviews, the range of topics and ideas to be explored, and the policy relevant of the study, in-depth interviews seemed more pertinent than a statistical quantitative study.

There are many benefits for conducting qualitative interviews in contrast to other methods such as surveys. During an interview, if a respondent does not understand the

questions, the investigator can clarify (Bernard 2002). Additionally, the investigator is able to probe further if it is felt the respondent is not answering fully or the response sparks a related question not originally conceived (Bernard 2002).

Data Collection and Analysis

Interviews were conducted during the second and third weeks of February 2009. In-person interviews were accommodating to four of the twenty respondents. The remaining sixteen respondents were interviewed over the phone. All interviews, in person and over the phone, were audio taped to assure accuracy of data and to allow for the approximate one hour it took to conduct the interview. While asking Forest Service employees about Forest Service policy and experiments seemed to raise only a minimal risk to the respondents, complete confidentiality was assured. Before each in-person interview, respondents were asked to read and sign an informed consent form (Appendix D). Likewise, each respondent participating in phone interviews was read a Subject Information and Consent Form and verbally agreed to continue with the interview (Appendix E). A key code was also created by the interviewer so that the respondents name could be related to how they are referred in the final paper.

All interviews were fully transcribed and read by the investigator multiple times. This allowed for the investigator to write down thoughts about each individual interview in the form of memos. In addition, thoughts regarding the interviews as collective data were also recorded in memo form. This resulted in identification of key information, connections within the data and interpretation of the information. Responses related to the major questions were classified in terms of areas of policy needing attention. This form of classification influenced the investigator's interpretation in that it allowed for a holistic picture to be presented. The importance of the whole idea was illustrated through interdependent qualities of those policy areas needing attention. The classifications further reflect how the investigator was influenced because they illustrate what the investigator thought accurately represented the reality of the situation. That reality is the focus of the remaining chapters: The Forest Service lacks a specific agency policy stating its management objectives for historic structures in wildernesses. This weakness has resulted in lack of training, funding, and other internal issues.

CHAPTER 4 - RESULTS

“We all interpret the agency’s views through our own eyeballs and through our own mind” (Respondent F).

The purpose of this paper is to identify the specific gaps in management that need attention. Adjusting management techniques to fix these gaps will bring the Agency closer to leaving extreme ideological debates behind and focusing the betterment of natural and cultural resources. However, it appears that the Forest Service lacks a management statement specifically regarding how they should manage all historic structures in wilderness. Despite its best efforts to manage the Nation’s multiple resources and uses, the Forest Service is forced to sweep certain issues under the rug more than others. The question, why is it that heritage resources are some of the easiest to put on hold? To really get at the issue, the agency needs to take their management a step beyond federal mandates that tell them to do something by responding, “This is how we will comply.” In an effort to get to this question, the interview questions focused on the respondent’s experiences and observations of the subject matter over their Forest Service careers while also asking if they felt the agency was complying with its policy obligations. In order to better understand where the employees were coming from in their statements, a review and discussion of Forest Service Policy is presented. Then, the respondent’s statements to the interview questions are presented.

The Manual

Current Forest Service Policy addresses heritage and wilderness management in section 2300 of the Forest Service Manual, titled *Recreation, Wilderness and Related Resource Management*. To see where there are discrepancies, summaries of the heritage and wilderness chapters will be presented and discussed. The following section best summarizes the Forest Service policy regarding the management of cultural resources.

The Forest Service Manual bases its objective for managing heritage resources (in section 2360.2) on a declaration from Congress in 1966 for the Federal government to, “administer federally owned, administered, or controlled prehistoric and historic resources in a spirit of stewardship for the inspiration and benefit of present and future generations”. This same section of the manual states the Forest Service will, “Provide

leadership in preserving America's heritage through responsible stewardship activities that recognize, preserve, protect, enhance, and use cultural resources for the greatest public benefit".

In order to meet this objective, responsibilities of the agency are to, "Manage cultural resources through a process of identification, evaluation and allocation to appropriate management categories that protect cultural resource values and benefit of the public.....use cultural resource data to increase scientific understanding of the evolution and condition of ecosystems and to benefit Forest Service land management practices" (FSM 2360.3).

This section of Forest Service policy addresses the care of cultural resources on all Forest Service lands. There is no clear distinction between archaeological sites and historic structures. This is important because not all cultural resources can be treated in the same manner. This section also does not differentiate between management methods for cultural resources inside wilderness from those outside wilderness boundaries.

The means to care for cultural resources in wilderness vary greatly from the methods used outside wilderness. The training portion in the heritage section of the manual (2360.91) covers the heritage positions that may be involved with recording, observing and making management decisions, but it does not say what type of skills are needed for the direct care of the resource. For example, an historic structure outside wilderness is usually accessible by motorized vehicle and the use of power tools is permitted. Inside wilderness, primitive tools are to be used and access is limited to hiking or animal traffic. Those conducting the work also need to be familiar with The Secretary's of Interior's Standards of Rehabilitation because certain modern construction materials are not appropriate for use on historic structures.

Further, the policy states that to protect cultural resources the agency should, "1) Safeguard cultural resources on National Forest Lands from unauthorized or improper uses and environmental degradation and 2) Mitigate adverse effect to historic properties when it is impossible or impractical to maintain them in a non-deteriorating or threatened condition" (FSM 2364.02). That means that even if an historic structure in wilderness is going to be released from management, it is to be, "protected from theft, vandalism, disturbance, and unauthorized uses under both 36 CFR part 261 and the Archaeological

Resource Protection Act” (FSM 2363.31d). In order to ensure that the protection of cultural resources is being abided by, a monitoring system should be in place.

Part of the protection plan the Forest Service Manual outlines is for employees to,

Monitor, assess, and document the physical conditions of human or environmental threats and implement management treatments that protect, conserve, stabilize, rehabilitate, restore and enhance cultural resources based on their National Register qualities and values, their importance to cultural groups, and their recommended management allocation (FSM 2364.03 (1d and 1e).

This information is supposed to help the Forest Service evaluate, “the effectiveness of project field methods and cultural resource treatments and or mitigation” through a monitoring program that is included in the forest or grassland plan” (FSM 2362.5).

Having a monitoring system will help the agency with its protection and stewardship of cultural resources because valuable baseline information will be readily available.

The Forest Service Manual section on wilderness management also raises questions about on the ground conduct regarding historic structure management. This section does not distinguish between cultural resources and historic structures, rather it only mentions structures in a confusing way for administrative purposes. For example, Section 2324.33a is contradicting because it states that the agency should ‘limit existing administrative sites to the existing structures or replace them with similar structure.’

What is bothersome is the word replace. As has been discussed already, if the structure is historic and destroyed, its significance cannot be replaced. Additionally, there are not to be any new permanent structures in wilderness, unless under the rare circumstance they are deemed the minimum necessary to administer wilderness. Most importantly, in section 2320.3(1), the statement, ‘Where there are alternatives among management decisions, wilderness values shall dominate over all other considerations except where limited by the Wilderness Act, subsequent legislation, or regulations” is misleading because the values society associates with wilderness are not written laws, they are personal values. Therefore, that statement contradicts itself because there is subsequent legislation and regulations regarding all resource management in wilderness that override those personal values.

Federal legislation always dominates over agency policy and values as it carries the legal weight. In fact, section 2323.8 of the manual lists legislation that is to guide the management of cultural and historic resources as,

the Antiquities Act (16 U.S.C. 431 et seq.), Historic Sites Act (16 U.S.C. 461), National Historic Preservation Act (16 U.S.C. 470), and implementing regulations 36 CFR 800, Executive Order 11593, Archaeological and Historic Data Preservation Act (1974), National Environmental Policy Act (42 U.S.C. 4321), Archaeological Resource Protection Act of 1979, and the individual forest and management plans.

In summary the management gaps present in current forest service policy are: 1) The Heritage section of the Forest Service Manual does not distinguish between cultural resource types and their specific care needs, 2) The Heritage section of the Forest Service Manual does not acknowledge that the care of cultural resources in wildernesses requires different techniques than those outside wilderness boundaries, 3) The Heritage section of the Forest Service Manual calls for a monitoring system of resources but again does not stipulate that monitoring must also take place in wildernesses, 4) The Wilderness Section of the Forest Service Manual (2330.3 (1)) alludes to wilderness values being put above other resource values in times of conflict. Values are important, but there are other legal mandates that must be met when making management decisions, 5) The Wilderness Section of the Forest Service Manual only briefly acknowledges the presence of cultural resources and does not define what types of cultural resources may be located in wilderness.

The Why

While not specifically referencing the other, the Wilderness Act and the National Historic Preservation Act provide for historic structures being present in wilderness. The extending urban areas of the mid-twentieth century prompted the citizens and government of the United States to better protect the country's natural and cultural resources. The Wilderness Act provides for areas with historic structures present to be deemed as wilderness in Section 2 (c)(4), Section 4 (b) and 4 (c). In the definition of wilderness, Section 2 (c)(4), explains that potential wilderness areas may contain features of historic value. Section 4 (b) states federal agencies administering an area as wilderness shall preserve the character of wilderness and each area will be devoted to the public's

recreational, scenic, scientific, educational, conservation, and historical use. The presence of historic structures allow the public to learn more about one of the historical uses of the area they are conserving for future use and enjoyment. In preserving the character of wilderness areas, Section 4 (c) does state, “there shall be no structure or installation within any such area.” However, a general interpretation has been that Section 4 (c) is referring to the installation of new structures. If that interpretation is correct, and it is the one used in this paper, historic structures cannot be classified in the same prohibition of uses because they were already present before the area officially became wilderness. The National Historic Preservation Act provides for historic structures both in and outside the boundaries of wilderness in Section 1 (5) and (6),

in the face of ever-increasing extensions of urban centers, highways, and residential, commercial, and industrial developments, the present governmental and nongovernmental historic preservation programs and activities are inadequate to insure future generations a genuine opportunity to appreciate and enjoy the rich heritage of our Nation; (6) the increased knowledge of our historic resources, the establishment of better means of identifying and administering them, and the encouragement of their preservation will improve the planning and execution of Federal and federally assisted projects and will assist economic growth and development.

By closely examining the language of both acts, they do not clash with each other as written.

Almost all respondents agreed that the laws as they are written actually complement, rather than contradict, each other. For example, one respondent said,

I do not think there is a conflict between the laws. It is just in your perspective and the interpretation. They are both [Wilderness Act and National Historic Preservation Act] environmental policies. The Wilderness Act was to promote natural landscapes and the Historic Preservation Act was to promote historic landscapes (Respondent L).

Of course, for their respective jobs, employees are more familiar with one act over the other because that is what they deal with on a day to day basis. Seemingly, the answer to why gaps in management exist is the major challenge the Forest Service faces when meeting their legal responsibilities concerning the care of historic structures in wilderness.

Oh yeah, it is a problem. Really with the exception of proactive monitoring initiatives there's not a compelling push to get your limited workforce out there. I'm sure it is similar in Montana as it is in Vermont; we are looking at timber sales, large special use permits, roads, campgrounds, and phone calls and walk-ins. To say that you are going to push inventory and monitoring in wilderness to the top of the list just is not going to happen. Unless there is some other reason, some political reason, some push from the top to get out there and really find out what is going on with these resources it is hard to make it happen (Respondent Q). I think it is a constant discussion between minimum requirements, making sure that we are truly doing the minimum requirement by going through the analysis. I think people want to take shortcuts and do it the way they can do it the quickest which many times is not the best for wilderness (Respondent T).

While overall it seems that the Agency desires to keep historically significant structures in wilderness, the current views as to where the agency stands vary from person to person. When asked what they felt the Forest Service's Management objectives for historic structures in wilderness are, all 20 respondents agreed that currently these objectives vary from area to area. The following statements give a feel for what the respondents said.

I do not think there is a single set of management objectives. I believe that there are different efforts made to do site specific analysis of the conditions and the public interest and need and desire and that there are different management objectives for historic structures and wilderness areas depending on where you are (Respondent A).

Preservation is definitely the foremost, I guess, direction of those wilderness structures. Secondary would be the occupancy and use that we use for administratively (Respondent B).

It is one of the aspects of wilderness that we definitely manage for. Appropriate historic structures that meet criteria for being maintained, it is the largest part of what we do in wilderness and it is part of the regular program (Respondent D).

From my experience and from what I have seen I would say leaving them alone and letting them deteriorate. I think overall it is benign neglect is what has been occurring (Respondent E).

I do not think there has ever been an objective laid out per se. I think it has mostly been an interpretation of Wilderness Act versus Historic Preservation. It has probably been more localized in many ways than there is anything at a policy level (Respondent R).

I think at this point with our Forest Service it seems difficult and it seems that we do not have that much direction on the ground level where I work. I do not see enough emphasis on historical structures, how they are managed, and how to better care for them or basic direction (Respondent M).

I do not think any or many are adamant that every historic structure in every wilderness should remain. But that is a discussion, not some mandate to get rid of them. But officially we have settled on the agreement that it needs to be discussed on a case by case basis (Respondent Q).

These quotes illustrate that across the board management objectives are not clearly stated by the Agency. Depending on the area, it seems management objectives for historic structures in wilderness vary depending on the area and its employees. If the employees cannot point to clearly outlined management objectives, on what are they basing their decisions and what seem to be the limitations in doing their work?

Given the written policies and the gaps there in, the respondents see several problems and issues. These are presented and discussed in the following paragraphs. The biggest problem respondents encountered when dealing with historic structures in wilderness relates to the ability to meet legal responsibilities. But, responses to why they have this problem vary. These responses, from most to least frequent are the following: Money, time, resources (man power and materials), fire (to protect or not to protect), an unresolved ideological debate, and resistance from wilderness managers or outside wilderness support groups.

We just have a terrible problem on this forest with not funding maintenance of our historic structures including our administrative facilities that we are using. They are just falling to pieces (Respondent E).

The biggest problem with dealing with them is finding the time to do the maintenance (Respondent B).

I think the biggest problem is gathering the resources to do the maintenance on the buildings that we have a commitment to maintain because the resources are scarce in general within the agency right now. There are a lot of buildings out there competing for scarce money and people (Respondent D).

Every year we see individual people's skills diminishing that have these traditional carpentry techniques (Respondent S).

Fire by far. There is just all this intricacy associated with logistics and protection and not causing additional deterioration of the building through trying to protect them. We cannot maintain them so eventually they get to the point where we cannot even protect them because it is too dangerous to do so. We have had a lot of fires in the last few years that were close to a lookout we have wrapped before. The last time we had a very close call and one of the firefighters almost went through the roof. It has become that rotten and unstable. So the determination that they made is that building will no longer be wrapped (Respondent P).

The fundamental problem is the unresolved ideological debate about the role and the rightness and the value of historic buildings in wilderness. We spend so much time and energy in debate and maneuvering and attacks and counter attacks on this stuff around the country (Respondent C).

The resistance of wilderness managers to assist us in our job. Just work with us because obviously there has been a decision made above us and above you that this building is important. So let's all work together and you can moan at a later date if you want to but let's just all work together and get it done. By and large, that happens, 95% of the time it goes wonderful (Respondent F).

The difficulty for us is the political side of maintaining them. If the person in the role in our partner's organization currently no longer wants shelters, they advocate removing them but we have got to push back and say that if we remove it we can never have one again (Respondent Q).

The preceding accounts show the conflicts that employees come across on a regular basis when balancing management priorities. The data suggest that when faced with a choice between meeting obligations toward historic structures and meeting other management obligations (fire, timber sales, watershed etc.), historic structures are the easiest thing over which to procrastinate.

Problems arise internally and externally regarding interpretations of the manual and legislation. Within the agency, tension is possible with all departments, not just a select few. In this instance, a possible clashing occurs not only between recreation, wilderness and heritage, but also engineering is caught in the argument.

Sometimes a well-meaning facilities engineer will look at a building and say, 'What do you mean you want me to put a cedar shake roof on the thing? I could use this synthetic material; it is half the price, it goes on quicker, it lasts longer, and it is fire resistant.' Purely utilitarian engineering thinking and it is all correct. But it is not appropriate on historic structures (Respondent C).

This type of conflict raises the question that, if the key players are constantly unable to communicate effectively, is the agency able to meet its management objectives? When asked during the interview, *“Do you feel since the Wilderness Act defines wilderness as an area without permanent presence of man that animosity is created in some Forest Service circles toward historic structures being preserved in wilderness?”* answers to this question varied from,

That is an easy one, yes. I do not think it is the rule, but certainly I have seen it. I think it has improved, but I think it probably varies from forest to forest. It seems like a very personality driven debate sometimes (Respondent Q), to

I have not ever experienced any animosity or bias against historic structures in wilderness. Internally, I do not see that at least in the modern Forest Service but externally I still find individuals that have a very narrow viewpoint of wilderness (Respondent O).

However, most respondents fell right in the middle in that they recognize that conflict exists between parties, but that there is growing respect between parties toward their specific interests. As Respondent P related,

Oh I guess I have seen that over time a little bit here and there. It is very specific to the person, their background and the baggage they carry about wilderness and those resources. I was pretty much a hard core wilderness truckee for a long time and I did not see any need that my trail crews and my wilderness rangers and myself needed to stay in a cabin. So I did not think there was any need for it. I have very much changed my opinion in working a lot with backcountry horsemen. Working with the bicentennial and the tribe for the last six years really increased my understanding and appreciation for heritage, not just historic, but prehistoric as well. It is just a part of that landscape, a beautiful part of that landscape.

Useful tolerance vs. just being there

It is critical to note the importance of distinguishing administrative use buildings from non-administrative use buildings. Early on in this study, it became evident that Administrative use buildings are tolerated a bit more than other structures because they are being used for their original purpose. In addition, there is understandable agency pride in these buildings by those that use them most. Their presence and continued use over 100 years after the Forest Service’s establishment is a testament to where the agency has come from, where it is today, and where it is expected to be in the future.

Administrative buildings are those the agency uses today to administer wilderness. As Respondent C explains,

To a true wilderness those administrative sites are the only things with any legitimacy at all. Region 1 has a lucky break. Our lucky break is that the majority of our historic buildings in wilderness are still working admin sites. They are still being used for the same purpose they were built for. That is where all the stuff that you need to run a wilderness is kept. They meet that language in the wilderness bills that talks about administrative facilities at the minimum level for successful administration of the wilderness.

The obvious examples of these buildings are ranger stations and fire lookouts. In addition however, many bridges, dams and trails could also be counted as administrative structures. Some clear examples of non-administrative structures would be Adirondack shelters, kilns, mining structures, and homestead cabins not utilized by the Forest Service.

A further separation between structure types can be seen in how they are monitored. For the most part, there is not a formal monitoring system for any structures within wildernesses. But, the Forest Service has taken more measures than any other agency to identify the places and structures important to its own history (National Trust for Historic Preservation 2008). As a result, administrative buildings are monitored more than non-administrative sites because employees spend more time in their vicinity on a regular basis.

The lack of a formal monitoring system was not the most pressing concern of the respondents, but the majority felt that if there was a more structured system, it would not be that much more work to document observations. As Respondent B summarizes, *I do not see a need for us to follow through with a formal maintenance review. But at the same time it probably would not be a big issue for us, or workload, or burden to do that.* Respondent D further explained,

We do not go out and specifically go to check on those sites. If someone is in the neighborhood and they are going past they will check something out. It probably would not be a bad idea [to update the inventory and condition of structures every 5 years]. Because with all of our resources inside wilderness, one of the things we do is inventory and monitor. We have the responsibility to care for those resources so we need to be aware of the status.

This distinction between different historic structures leads to questioning how desirable either group of structures is to the agency and its employees. That is, do employees only desire to see administrative historic structures in wilderness, both administrative and non-administrative historic structures, or no historic structures at all?

Respondents felt the Forest Service desires to keep historic structures in wilderness areas. However, the responses were not cut-and-dry yeses. There were caveats following all affirmative answers.

Some of them, yes (Respondent A).

I think as you move away from structures that have current utility to those of which are of historical interest, even high historical value, there may be more ambivalence within the agency about maintaining them (Respondent I).

Interestingly, when asked about their personal opinion regarding the presence of historic structures in wilderness areas, only two of the 20 respondents said their opinion varied from the agency's. In a perfect world these two would like to see all structures removed from wilderness.

Personally I would love to see them all go. [Laughing] But again, that is just my personal preference (Respondent D).

I do not want to see them in there. I am one of those wilderness purists and I think we have enough problems just dealing with recreational impacts of use. I differ with some of my colleagues in the Bob Marshall wilderness and that they have all of those administrative sites. It is a beautiful spot but to me it seems very incompatible with the idea of wilderness. I question when a trail crew will spend an inordinate amount of time hiking when they could be working on the trail and have a spike camp but no they are using part of their work day and being paid as part of their work day to get to and from a cabin because they want to stay in a cabin versus getting a lot more of the trail work done if they were camped out in a spike camp (Respondent J).

While everyone brings their own self into their job, how do they keep the balance between their personal philosophies and supporting the agency's mission?

I try to be honest. I try to be very careful when I am talking to visitors. This is my personal opinion and I do not offer it unless they ask for it. You have to be very careful to separate out what is your personal opinion from your professional opinion" (Respondent J). "No I really do not [feel conflicted] actually. Probably 10 years ago I did but maybe it is just a part of being folded into the agency where I do strongly believe that even though the agency manages wilderness in a way that might not match my personal values all the time, I am entirely on board with what the agency does (Respondent D).

From this information, it seems that the majority of Forest Service employees think positively about all historic structures in wilderness. However, administrative sites

are favored more because they are the employees' homes when they are working in the wilderness and thus serve a direct purpose to the agency.

Wilderness: East, West and caught in the Middle

At this point it is important to acknowledge that wildernesses across the country can face the same management conflicts, but they are much different across the country in terms of on the ground features. The eastern and midwest wildernesses face similar issues as the larger western wilderness areas, but with some individual tweaks. These wilderness areas usually are geographically smaller with a more noticeable human presence.

There has always been the tension about the eastern wilderness area and the smaller sizes and the fact that many, many of them have had human impacts or more intense human impacts than those in the west (Respondent I).

Often, wilderness being present in the Midwest is not given much thought. The Midwest faces a stigma of being a flat land lacking in the geographic grandeur that tends to be associated with the backcountry. In addition, the wilderness areas in the East were established later because it was felt that there was nothing in the Wilderness Act that actually forbid these areas as qualifying as wilderness. As Hendee and Dawson (2002) explain,

The argument for the separate system was based mostly on the premise that roadless areas in the East had been severely modified by previous human use and consequently did not qualify for wilderness designation under criteria of the Wilderness Act. Congress eventually determined that designated roadless areas in the East should be included and managed as part of the National Wilderness Preservation System (p.159).

The Eastern and Midwest areas also have fewer administrative structures and more regionally specific structures present in these backcountry sites. Examples of regionally specific structures are those that reflect the cultural past of a particular area such as Adirondack shelters or adobe cliff dwellings. However, the take home message is despite obvious human influence on the land, legally the so-called Eastern Wilderness Act acknowledges that lands with signs of human presence can be classified as wilderness.

While all managers face ideological debates about wildernesses, the east coast managers also may apply a more romantic view of western wilderness to their areas in order to diminish the role humans have played on the landscape.

I would say within the agency there is a tendency – if you ask someone about wilderness they would not pick out a 10,000 acre wilderness in the White Mountain National Forest or something small in some of the other forests. They would think about the Bob Marshall or Frank Church (Respondent I).

Wildernesses similar to those in the White Mountain area of New Hampshire are small geographically and the presence of humans can be seen more readily than in the larger areas like the Frank Church Wilderness. Common images of wildernesses like the Frank Church are those of vast open areas that are pristine natural places. Due to this extreme purist view or a purely strong desire to erase the entrepreneurial environmental resource degradation of past Anglo inhabitants, advocacy for removal of historic structures is high especially from groups outside the Forest Service. For example, Region 5 had quite a battle between the Forest Service and the High Sierra Hikers organization over the maintenance of dams used for administrative purposes.

The High Sierra Hikers website describes the group as a non-profit organization that feels management agencies in the High Sierra are heavily biased in favor of commercial interests that pollute national lands for private gain. Today the group, “Continues to review government plans and policies and to challenge decisions that compromise the quality and integrity of the High Sierra for the benefit of special interests” (<http://www.highsierrahikers.org>).

After following the minimum requirements analysis, the Forest Supervisor with the Emigrant Wilderness proposed in the forest plan to maintain 11 of the 18 existing dams within the Emigrant Wilderness. All 18 dams were constructed in the early 1920s for watering livestock, to keep streams flowing throughout the year, and to be stocked with fish (High Sierra Hikers v. USDA Forest Service 2006).

The forest in their forest plan proposed to stabilize and maintain these dams, not rebuild them but at least those that were in some kind of repair they would keep them in decent shape. These dams right now fulfill an important recreational purpose in terms of fishing, in terms of swimming at the end of a long hot day in the high Sierras. When they came out with this proposal, they were taken to court by several environmental groups that challenged keeping those dams as a violation of the Wilderness Act and the Forest Service’s primary responsibility to preserve wilderness character. The judge ruled in their favor and ultimately the

Forest Service did not appeal the decision. We were not required to remove them but we were constrained from actually maintain them (Respondent I).

This case illustrates how the grayness of management issues involving historic structures in wildernesses. The group suing the Forest Service claimed the dams damaged the wilderness character because they diverted streams for stock, provided habitat for non-native fish populations, and other perpetuated ecological degradation. However, these dams were in place long before the wilderness was designated. The stocking of non-native fish also took place before the Emigrant Wilderness was established and it has become a popular fishing destination for recreationists. However, the case stated,

The court must conclude the plain and unambiguous text of the Wilderness Act speaks directly to the activity at issue in this case – repairing, maintaining and operating dam “structures” – and prohibits that activity. In addition, the overall language of subdivision (d) of section 1133, along with the case authority and the Forest Service Policy, imply that ‘when there is a conflict between maintain the primitive character of the area and between any other use [...] the general policy of maintaining the primitive character of the area must be supreme’ (p.16). ‘The parties agree the Forest Service’s determination that the repair, maintenance and operation of the dams in the Emigrant Wilderness is lawful under the Wilderness Act is based on the agency’s determination that those actions are ‘necessary to meet minimum requirements for the administration of the area for the purpose of this chapter’ The flaw in Defendants’ argument is that, regardless of how carefully and thoroughly Forest Service considered the various action plans, the plans considered and the plan finally chosen are predicated on the legal contention that maintenance, repair and operation of the dam is ‘necessary to meet minimum requirements for the administration of the area for purposes of this chapter’ – a contention that is without legal or logical support.... The legal basis for Forest Service’s preferred plan is without support and runs afoul of the Wilderness Act because the actions contemplated are not ‘necessary to meet minimum requirements for the administration of the area’ (p.25-26).

If the Forest Services’ finding the proposed action to be the minimum necessary to administer wilderness, then it is hard to see how they were contrary to the Wilderness Act while still acting lawfully. However, due to the language of the Wilderness Act, it becomes clear that technically ‘historical use’ cannot be unquestionably linked to structures. The court concluded,

...that Forest Services’ determination that it is acting in conformity with the Wilderness Act by authorizing the repair, maintenance, and operation of the dams is erroneous and contrary to law (p.32). Thus, while it remains ambiguous

whether 'historical use' can justify the maintenance repair or operation of structures that would otherwise be offending, at least it is clear that the purpose of the Wilderness Act is not directly offended by actions that seek to preserve historical use. Thus, at minimum, the Wilderness is ambiguous with respect to the proposed preservation of dam structures on the grounds of historical use (p.37).

While the plaintiff's concerns about the ecological health of the area are valid, this case seems to be more of a fish and wildlife issue, than a structural issue. Even though the court acknowledges the Forest Service followed protocol in reaching their decision, it was determine the agency violated the Wilderness Act. What seems confusing and problematic is why the Forest Service did not mention in their defense the maintenance responsibilities as a part of the National Historic Preservation Act. The Agency mention that seven of the eleven dams proposed to be maintained are eligible for listing on the National Register, but the discussion ends at that point. Perhaps having The Wilderness Act and The National Historic Preservation Act side by side possibly could have resulted in the court finding a way for the dam maintenance to take place, while sill addressing the ecological concerns. Firmly stating their position on historic structures being compatible with wilderness and pointing towards other legislative obligations would give the Agency a stronger argument in court as there are few cases of precedence.

Two relevant cases, involving The Park Service instead of the Forest Service, are *Wilderness Watch v. Mainella* (2004) and *Olympic Park Associates v. Mainella* (2005). In the first The Eleventh Circuit Court of Appeals reversed a previous ruling allowing the Park Service to provided limited motorized access across designated wilderness in order to reach two historic sites on Cumberland Island.

This appeal turns not on the preservation of historical structures but on the decision to provide motorized public access to them across designated wilderness areas" (p.6).

This case focuses on motorized access through wilderness instead of the presence of historic structures in wilderness. However, it is important for the purpose of this paper because the reading of the case suggests that the historic structures are deemed to be a relevant component of the Wilderness and an integral part of Cumberland Island.

The Olympic Park case involved the Park Service wanting to reconstruct two shelters found within the wilderness. They proposed doing the reconstruction outside the

wilderness boundaries, then transport the frames to the sites by using helicopters. The court ruled,

.....shelters have collapsed under the natural effects of weather and time, and to reconstruct the shelters and place the replicas on the sites of the original shelters by means of a helicopter is in direct contradiction of the mandate to preserve the wilderness character of the Olympic Wilderness.....The Park Service need not build replica shelters to be airlifted into locations where the original shelter once stood in order to preserve history (p.12-13).

As discussed in Chapter 1, the physical parts of structures can be replaced, but the historic significance and integrity cannot be replaced. Even in the consideration of safety for those within the wilderness, there were deemed to be enough remaining trail shelters to serve that purpose.

Training

One point that came up throughout all 20 interviews was how the Northern Region, encompassing the perimeter of northeastern Washington, northern Idaho, and Montana and the national grasslands in North Dakota and northwestern South Dakota, is held in high opinion by those who know of its commitment to natural and cultural resource management. Region One boasts the only Historic Preservation Training Team within the Forest Service and it is a significant part of this reputation. The team is located within the Engineering department, and has earned a glowing reputation for doing quality work, and being the liaison between all the players involved. Region One also offers more formal and on the job training via the preservation team and the Ninemile Wildlands Training Center.

From a training perspective, wilderness and heritage are treated together for seasonal and new employees at orientation. This is a good start, but it does not seem there is much follow up over ones' career. Permanent employees making decisions on a day to day basis could also benefit from an integrated training program. Some of them are self motivated to seek out help, but for others some kind of basic cross training is warranted. When asked about training opportunities, one respondent said, *"Not right now we do not [have adequate opportunities]. I think we need some more of that"* (Respondent R). However, current agency budgetary limitations make it extremely difficult for employees to make it to training that is not close to their base of operation.

“Right now we are so strapped in our travel budget, we have a ceiling on our travel budget that frankly were being, I would say as a whole, discouraged from seeking out these kinds of training opportunities” (Respondent E).

Getting the job done

The Forest Service Manuel states its management objective 2360.2 indicates the Forest Service’s aspiration to be a leader in preserving America’s heritage through responsible stewardship activities that recognize, preserve, protect, enhance, and use cultural resources for the greatest public benefit. In successfully meeting objective 2360.2, employees felt for the most part that the agency succeeds, but that it only gets an average grade. While some felt the Forest Service is doing all that it can to meet this objective, three-quarter felt the agency was going in the right direction, but needed to do more.

There is that stuff that – unless it has been driving from the grassroots or from the ground level workers up, it has kind of fallen off the map. What we could do better is give more consideration and time to those buildings that are not so logistically important to us (Respondent B).

Yes, I would guess from a section 106 point of view, we probably do quite well compared to other agencies. The section 110 stuff, the outreach, the stewardship, no I do not think that we put nearly enough resources toward it. It is an easy thing to cut. I’m inclined to give the agency the benefit of a doubt most of the time, but I would have to say that I do not think they go full bore supporting or meeting their obligations (Respondent Q).

One way the agency could illustrate how it is being a leader would be to allow the public to help with the work on historic structures. Volunteers would be able to spend time in the backcountry preserving a snippet of history by carrying on traditional skills, and they would be able to further enjoy and appreciate their natural surroundings. Perhaps this would help the public that thinks historic structures are not appropriate in wilderness to fully understand how these structures are used. In the end they still may think the structures are inappropriate, but hopefully they would have more respect for what the Forest Service is striving to do.

One example of a program providing such benefits is the Passport in Time program the Forest Service offers nationwide. This program allows volunteers

opportunities to visit National Forests across the country. They not only provide their time and skills to a particular cultural resource project, but also they take field trips through the surrounding areas.

That [Passport in time] is one of the few opportunities that the general public has to experience our historic buildings in wilderness. If I was looking at a simple project, I would be happy to use PIT. Most of the time, I honestly prefer to use our own employees. We want to train people that are going to be with the agency and going to continue to do work (Respondent L).

Even with the benefits to the public, the PIT program may not always be appropriate in wilderness. The decision would have to be based on the scale of work needed and on organizing group logistics.

Summary

Due to gaps in written policy, many problems arise regarding the management of historic structures in wilderness. These gaps are the following: 1) The Heritage section of the Forest Service Manual does not distinguish between cultural resource types and their specific care needs, 2) The Heritage section of the Forest Service Manual does not acknowledge that the care of cultural resources in wildernesses requires different techniques than those outside wilderness boundaries, 3) The Heritage section of the Forest Service Manual calls for a monitoring system of resources but again does not stipulate that monitoring must also take place in wildernesses, 4) The Wilderness Section of the Forest Service Manual alludes to wilderness values being put above other resource values in times of conflict. Values are important, but there are other legal mandates that must be met when making management decisions, 5) The Wilderness Section of the Forest Service Manual only briefly acknowledges the presence of cultural resources and does not define what types of cultural resources may be located in wilderness.

Forest Service employees feel many problems arise from these gaps in policy. Respondents felt they had problems meeting legal responsibilities in terms of lacking money, time, resources (manpower and materials), desiring more skill focused training and almost constantly partaking in debates driven by ideologies of key players involved with the management of historic structures in wilderness.

With these observations in mind, below are some recommendations for the Forest Services' consideration.

CHAPTER 5 - RECCOMENDATIONS

The conflicts concerning historic structure management in wilderness are the result of a lack of education regarding the current policy, a need for the policy to be re-evaluated, and lack of resources in terms of manpower and money. To deal with future challenges, it is important for the Forest Service to produce a policy that specifically addresses the management of historic structures in wilderness areas. Considering the Emigrant Wilderness case, an agency specific policy statement could have given the Forest Service more focus for defending its position regarding how the dams and the wilderness were going to be managed. Bits and pieces of policy are already in place. However, they could be much more cohesive. An easily accessible and specific policy statement regarding the coexistence of historic structures and wilderness is highly recommended. Such a statement would provide employees with a hard document that clarifies solutions to conflicts that may come up in their jobs. Given that laws exist, a strong policy statement would help focus attention on how historic structures should be managed in wilderness. In addition to an overall policy statement, the following are specific areas of policy that need attention.

First, the Forest Service needs to establish one philosophical position that it can back up in practice. The lack of such a statement in current policy is one of the foremost problems facing the employees according to the respondents. By not having a specific position statement on the issue, those doing the ground work have a hard time getting the resources needed to do the job. As previously mentioned, such a statement would also provide the Agency with precedence if legal troubles should arise over historic structure management in wilderness. This statement could be something such as:

The Forest Service views historic structures within wilderness as integral resources contributing to the overall character of wilderness. Once Forest and Regional line officers deem an historic structure (both administrative and non-administrative) necessary as the minimum requirement to administer wilderness, the Forest Service will maintain historic structures in wilderness. In order to meet the requirements of federal legislation such as The Wilderness Act of 1964 and The Historic Preservation Act of 1966, specific management plans will be adapted on the Regional and Forest level in order to meet the individual needs of wildernesses across the country. While adhering to the Minimum Requirements, Minimum Tool analysis, administrative buildings will be evaluated for their contributing use to administrative purposes, and non-administrative buildings will be evaluated for their contribution to the overall

experience of visitors and their contribution to the overall character of wilderness. Maintenance practices shall continue to be up to the Secretaries Standards for Rehabilitation, and using proper methods and materials that have the least impact on the wilderness. In addition, any structure approaching or past the 50 year age shall be evaluated for historic value.

From here, regions and forests could adapt plans to adequately address the resources present in their area.

Second, the Forest Service should administer historic structures in wildernesses under their own specific heading under the current Cultural Resources or Wilderness section of the manual. As we saw in the previous chapter, current Forest Service policy lumps all cultural resources into one category with a blanket management policy. While they can have similar needs, historic structures cannot be managed in the same way as archeological sites or cultural landscapes. The reason for this separation and specific explanation would provide a clear outline of what on the ground activities and methods are appropriate for both historic and wilderness resources.

Third, the Forest Service should clarify between the ‘Release from management’ and ‘Management by neglect’ concepts as they cannot be used interchangeably in a manner in which they sometimes have been in the past. Current policy defines ‘Release from management’. However, some have used ‘Management by neglect’ as a management practice when letting structures deteriorate and return to nature. This use is not correct. ‘Release from management’ means all data have been collected, all adverse effects have been considered, and no more money will be appropriated for that structure. This is an active form of management. ‘Management by neglect’ is considered an adverse affect. This tends to happen when resources are unavailable for maintenance, or as an actual management strategy. *“We do not have to preserve everything, but we do have to manage it. If you have not determined the proper use for the building you should not be letting it deteriorate” (Respondent L).* Knowingly using ‘Management by neglect’ as a management strategy can be a way to brush off responsibility.

Fourth, revising policy is a good first step, but training is also needed. The resulting policy should be able to be applied to do the work that is needed. In fact, proper education and training is called for in the National Historic Preservation Act in section 401,

The Congress finds and declares that, given the complexity of technical problems encountered in preserving historic properties and the lack of adequate distribution of technical information to preserve such properties, a national initiative to coordinate and promote research, distribute information, and provide training about preservation skills and technologies would be beneficial.

Written material is valuable, but on the job training is most desirable because situations are presented and can be dealt with as they arise. Even local, in house, integrated department training sessions would be valuable to employees because appropriate information can be transmitted without large expense. There are limits on what the agency can do, but in order for the agency to function in all of its areas, training opportunities should be highlighted.

Training for employees covering the basics of both wilderness and historic structure management protocol that is delivered over Ag-Learn is one way for the information to reach key employees. Those working in wilderness, recreation, heritage and engineering might be required to complete the training periodically as a way to keep up with changes and new information. In addition to, or in place of the Ag-Learn system, training through units such as the Arthur Carhart National Wilderness Training Center (ACNWTC) might occur. Since the ACNWTC training is given to managers every year on the subject of making the best decisions possible for preserving wilderness and its character, it could continue to provide a module for training for people really interested in wilderness and cultural resources.

For individuals who have a deep interest in the topic, developing a certificate program relating to historic structures in wilderness could provide educational credibility for employees who pursue such a certificate. It is likely that these employees would become future trainers and leaders in the agency on the topic. Such a certificate program could cover the areas of proper materials, techniques, tools and possible impacts on natural resources as a result of the any undertaking.

Fifth, the monitoring of historic structures in wilderness should be more formal. Conducting a more formal review is not only a part of current policy and federal legislation; it can also be a source for future questions. A simple written document with photographs would be a helpful reference for employees. Documentation would keep track of 1) Maintenance needs of administrative structures, and 2) conditions of non-

administrative sites that are, or are going to be, eligible for listing on the National Register of Historic Places.

Sixth, interpretation of historic structures could prove valuable to help the public further appreciate all that the wilderness character has to offer. While on site signing usually is inappropriate in wilderness, there are other ways to do interpretation that could strengthen the relationship between wilderness and historic structures. Through web sites or information at stations outside wilderness, the story of wilderness heritage might enhance the visitor experience, yet leave enough mystery for self discovery as structures are encountered.

Conclusion

Wilderness allows its visitors the opportunity to test their limits. The historic structures within wilderness are a tangible reference to how people of the past were challenged by their surroundings, yet they were able to survive with a minimal impact on the landscape.

Preserving historic structures in wilderness should not be equated to permanent improvements in wilderness. That clause was rightfully put in the Wilderness Act to keep urban development from creeping into an area after it was established as wilderness. As we have seen, there are a few exceptions for safety reasons, but even then those decisions are not made lightly.

As a result of this mostly ideological debate, we have seen throughout this paper that gaps exist in current Forest Service policy regarding the management of historic structures in wilderness. Gaps in policy exist because current policy does not address specifically how to integrate historic structures and wilderness. This has resulted in confusion on the ground about how to achieve a balance between these important resources. Historic structures in wilderness are compatible and do not impede upon the wilderness character. Agencies need to have a clear understanding of how they are going to abide by the governing legislation, and analysis of the current situation has indicated lack of a strong, agency specific management position. Gaps in policy surfaced during this study in the areas of appropriated resources, training, and interpretations of how to meet legal responsibilities for both historic structures and wilderness resources.

Wilderness and historic structures can coexist because in their respective ways, they represent how human interaction with the natural world has evolved over time. The only question remaining is where does this issue go now? Debate about the appropriateness of historic structures being present and preserved in wilderness are not new issues. In some form or another, this topic has surfaced, been debated, then simmered, but never properly addressed or resolved. *“I regret that it did not get resolved in the 32 years I have put in with this outfit” (Respondent C).* Identifying the conflicts between policy and practice is only the first step. Research, further evaluation, communication between parties and implementation will require persistent dedication and time in order for making adjustments to the current Forest Service policy.

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APPENDICES

Appendix A.

WILDERNESS ACT
Public Law 88-577 (16 U.S.C. 1131-1136)
88th Congress, Second Session
September 3, 1964
AN ACT

To establish a National Wilderness Preservation System for the permanent good of the whole people, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled.

Short Title

Section 1. This Act may be cited as the "Wilderness Act."

WILDERNESS SYSTEM ESTABLISHED STATEMENT OF POLICY

Section 2.(a) In order to assure that an increasing population, accompanied by expanding settlement and growing mechanization, does not occupy and modify all areas within the United States and its possessions, leaving no lands designated for preservation and protection in their natural condition, it is hereby declared to be the policy of the Congress to secure for the American people of present and future generations the benefits of an enduring resource of wilderness. For this purpose there is hereby established a National Wilderness Preservation System to be composed of federally owned areas designated by Congress as "wilderness areas", and these shall be administered for the use and enjoyment of the American people in such manner as will leave them unimpaired for future use and enjoyment as wilderness, and so as to provide for the protection of these areas, the preservation of their wilderness character, and for the gathering and dissemination of information regarding their use and enjoyment as wilderness; and no Federal lands shall be designated as "wilderness areas" except as provided for in this Act or by a subsequent Act.

(b) The inclusion of an area in the National Wilderness Preservation System notwithstanding, the area shall continue to be managed by the Department and agency having jurisdiction thereover immediately before its inclusion in the National Wilderness Preservation System unless otherwise provided by Act of Congress. No appropriation shall be available for the payment of expenses or salaries for the administration of the National Wilderness Preservation System as a separate unit nor shall any appropriations be available for additional personnel stated as being required solely for the purpose of managing or administering areas solely because they are included within the National Wilderness Preservation System.

DEFINITION OF WILDERNESS

(c) A wilderness, in contrast with those areas where man and his own works dominate the landscape, is hereby recognized as an area where the earth and its community of life are untrammelled by man, where man himself is a visitor who does not remain. An area of wilderness is further defined to mean in this Act an area of undeveloped Federal land retaining its primeval character and influence, without permanent improvements or human habitation, which is protected and managed so as to preserve its natural conditions and which (1) generally appears to have been affected primarily by the forces of nature, with the imprint of man's work substantially unnoticeable; (2) has outstanding opportunities for solitude or a primitive and unconfined type of recreation; (3) has at least five thousand acres of land or is of sufficient size as to make practicable its preservation and use in an unimpaired condition; and (4) may also contain ecological, geological, or other features of scientific, educational, scenic, or historical value.

NATIONAL WILDERNESS PRESERVATION SYSTEM - EXTENT OF SYSTEM

Section 3.(a) All areas within the national forests classified at least 30 days before September 3, 1964 by the Secretary of Agriculture or the Chief of the Forest Service as "wilderness", "wild", or "canoe" are hereby designated as wilderness areas. The Secretary of Agriculture shall -

(1) Within one year after September 3, 1964, file a map and legal description of each wilderness area with the Interior and Insular Affairs Committees of the United States Senate and the House of Representatives, and such descriptions shall have the same force and effect as if included in this Act: Provided, however, That correction of clerical and typographical errors in such legal descriptions and maps may be made.

(2) Maintain, available to the public, records pertaining to said wilderness areas, including maps and legal descriptions, copies of regulations governing them, copies of public notices of, and reports submitted to Congress regarding pending additions, eliminations, or modifications. Maps, legal descriptions, and regulations pertaining to wilderness areas within their respective jurisdictions also shall be available to the public in the offices of regional foresters, national forest supervisors, and forest rangers.

Classification. (b) The Secretary of Agriculture shall, within ten years after September 3, 1964, review, as to its suitability or unsuitability for preservation as wilderness, each area in the national forests classified on September 3, 1964 by the Secretary of Agriculture or the Chief of the Forest Service as "primitive" and report his findings to the President.

Presidential recommendation to Congress. The President shall advise the United States Senate and House of Representatives of his recommendations with respect to the designation as "wilderness" or other reclassification of each area on which review has been completed, together with maps and a definition of boundaries. Such advice shall be given with respect to not less than one-third of all the areas now classified as "primitive" within three years after September 3, 1964, not less than two-thirds within seven years after September 3, 1964, and the remaining areas within ten years after September 3, 1964.

Congressional approval. Each recommendation of the President for designation as "wilderness" shall become effective only if so provided by an Act of Congress. Areas classified as "primitive" on September 3, 1964 shall continue to be administered under the rules and regulations affecting such areas on September 3, 1964 until Congress has determined otherwise. Any such area may be increased in size by the President at the time he submits his recommendations to the Congress by not more than five thousand acres with no more than one thousand two hundred and eighty acres of such increase in any one compact unit; if it is proposed to increase the size of any such area by more than five thousand acres or by more than one thousand two hundred and eighty acres in any one compact unit the increase in size shall not become effective until acted upon by Congress. Nothing herein contained shall limit the President in proposing, as part of his recommendations to Congress, the alteration of existing boundaries of primitive areas or recommending the addition of any contiguous area of national forest lands predominantly of wilderness value. Notwithstanding any other provisions of this Act, the Secretary of Agriculture may complete his review and delete such area as may be necessary, but not to exceed seven thousand acres, from the southern tip of the Gore Range-Eagles Nest Primitive Area, Colorado, if the Secretary determines that such action is in the public interest.

Report to President. (c) Within ten years after September 3, 1964 the Secretary of the Interior shall review every roadless area of five thousand contiguous acres or more in the national parks, monuments and other units of the national park system and every such area of, and every roadless island within the national wildlife refuges and game ranges, under his jurisdiction on September 3, 1964 and shall report to the President his recommendation as to the suitability or unsuitability of each such area or island for preservation as wilderness.

Presidential recommendation to Congress. The President shall advise the President of the Senate and the Speaker of the House of Representatives of his recommendation with respect to the designation as wilderness of each such area or island on which review has been completed, together with a map thereof and a definition of its boundaries. Such advice shall be given with respect to not less than one-third of the areas and islands to be reviewed under this subsection within three years after September 3, 1964, not less than two-thirds within seven years of September 3, 1964 and the remainder within ten years of September 3, 1964.

Congressional approval. A recommendation of the President for designation as wilderness shall become effective only if so provided by an Act of Congress. Nothing contained herein shall, by implication or otherwise, be construed to lessen the present statutory authority of the

Secretary of the Interior with respect to the maintenance of roadless areas within units of the national park system.

Suitability. (d)(1) The Secretary of Agriculture and the Secretary of the Interior shall, prior to submitting any recommendations to the President with respect to the suitability of any area for preservation as wilderness –

Publication in Federal Register. (A) give such public notice of the proposed action as they deem appropriate, including publication in the Federal Register and in a newspaper having general circulation in the area or areas in the vicinity of the affected land;

Hearings. (B) hold a public hearing or hearings at a location or locations convenient to the area affected. The hearings shall be announced through such means as the respective Secretaries involved deem appropriate, including notices in the Federal Register and in newspapers of general circulation in the area: Provided, That if the lands involved are located in more than one State, at least one hearing shall be held in each State in which a portion of the land lies;

(C) at least thirty days before the date of a hearing advise the Governor of each State and the governing board of each county, or in Alaska the borough, in which the lands are located, and Federal departments and agencies concerned, and invite such officials and Federal agencies to submit their views on the proposed action at the hearing or by no later than thirty days following the date of the hearing.

Any views submitted to the appropriate Secretary under the provisions of (1) of this subsection with respect to any area shall be included with any recommendations to the President and to Congress with respect to such area.

Proposed modification. (e) Any modification or adjustment of boundaries of any wilderness area shall be recommended by the appropriate Secretary after public notice of such proposal and public hearing or hearings as provided in subsection (d) of this section. The proposed modification or adjustment shall then be recommended with map and description thereof to the President. The President shall advise the United States Senate and the House of Representatives of his recommendations with respect to such modification or adjustment and such recommendations shall become effective only in the same manner as provided for in subsections (b) and (c) of this section.

USE OF WILDERNESS AREAS

Section 4.(a) The purposes of this Act are hereby declared to be within and supplemental to the purposes for which national forests and units of the national park and national wildlife refuge systems are established and administered and -

(1) Nothing in this Act shall be deemed to be in interference with the purpose for which national forests are established as set forth in the Act of June 4, 1897 (30 Stat. 11), and the Multiple-Use Sustained-Yield Act of June 12, 1960 (74 Stat. 215) (16 U.S.C. 528-531).

(2) Nothing in this Act shall modify the restrictions and provisions of the Shipstead-Nolan Act (Public Law 539, Seventy-first Congress, July 10, 1930; 46 Stat. 1020), the Thye-Blatnik Act (Public Law 733, Eightieth Congress, June 22, 1948; 62 Stat. 568), and the Humphrey-Thye-Blatnik-Andresen Act (Public Law 607, Eighty-Fourth Congress, June 22, 1956; 70 Stat. 326), as applying to the Superior National Forest or the regulations of the Secretary of Agriculture.

(3) Nothing in this Act shall modify the statutory authority under which units of the national park system are created. Further, the designation of any area of any park, monument, or other unit of the national park system as a wilderness area pursuant to this Act shall in no manner lower the standards evolved for the use and preservation of such park, monument, or other unit of the national park system in accordance with sections 1, 2, 3, and 4 of this title, the statutory authority under which the area was created, or any other Act of Congress which might pertain to or affect such area, including, but not limited to, the Act of June 8, 1906 (34 Stat. 225; 16 U.S.C. 432 et seq.); section 3(2) of the Federal Power Act (16 U.S.C. 796(2)); and the Act of August 21, 1935 (49 Stat. 666; 16 U.S.C. 461 et seq.).

(b) Except as otherwise provided in this Act, each agency administering any area designated as wilderness shall be responsible for preserving the wilderness character of the area and shall so administer such area for such other purposes for which it may have been established as also to preserve its wilderness character. Except as otherwise provided in this

Act, wilderness areas shall be devoted to the public purposes of recreational, scenic, scientific, educational, conservation, and historical use.

PROHIBITION OF CERTAIN USES

(c) Except as specifically provided for in this Act, and subject to existing private rights, there shall be no commercial enterprise and no permanent road within any wilderness area designated by this Act and, except as necessary to meet minimum requirements for the administration of the area for the purpose of this Act (including measures required in emergencies involving the health and safety of persons within the area), there shall be no temporary road, no use of motor vehicles, motorized equipment or motorboats, no landing of aircraft, no other form of mechanical transport, and no structure or installation within any such area.

SPECIAL PROVISIONS

(d) The following special provisions are hereby made:

(1) Within wilderness areas designated by this Act the use of aircraft or motorboats, where these uses have already become established, may be permitted to continue subject to such restrictions as the Secretary of Agriculture deems desirable. In addition, such measures may be taken as may be necessary in the control of fire, insects, and diseases, subject to such conditions as the Secretary deems desirable.

(2) Nothing in this Act shall prevent within national forest wilderness areas any activity, including prospecting, for the purpose of gathering information about mineral or other resources, if such activity is carried on in a manner compatible with the preservation of the wilderness environment. Furthermore, in accordance with such program as the Secretary of the Interior shall develop and conduct in consultation with the Secretary of Agriculture, such areas shall be surveyed on a planned, recurring basis consistent with the concept of wilderness preservation by the United States Geological Survey and the United States Bureau of Mines to determine the mineral values, if any, that may be present; and the results of such surveys shall be made available to the public and submitted to the President and Congress.

Mineral leases, claims, etc. (3) Notwithstanding any other provisions of this Act, until midnight December 31, 1983, the United States mining laws and all laws pertaining to mineral leasing shall, to the extent as applicable prior to September 3, 1964, extend to those national forest lands designated by this Act as "wilderness areas"; subject, however, to such reasonable regulations governing ingress and egress as may be prescribed by the Secretary of Agriculture consistent with the use of the land for mineral location and development and exploration, drilling, and production, and use of land for transmission lines, waterlines, telephone lines, or facilities necessary in exploring, drilling, producing, mining, and processing operations, including where essential the use of mechanized ground or air equipment and restoration as near as practicable of the surface of the land disturbed in performing prospecting, location, and , in oil and gas leasing, discovery work, exploration, drilling, and production, as soon as they have served their purpose. Mining locations lying within the boundaries of said wilderness areas shall be held and used solely for mining or processing operations and uses reasonably incident thereto; and hereafter, subject to valid existing rights, all patents issued under the mining laws of the United States affecting national forest lands designated by this Act as wilderness areas shall convey title to the mineral deposits within the claim, together with the right to cut and use so much of the mature timber therefrom as may be needed in the extraction, removal, and beneficiation of the mineral deposits, if needed timber is not otherwise reasonably available, and if the timber is cut under sound principles of forest management as defined by the national forest rules and regulations, but each such patent shall reserve to the United States all title in or to the surface of the lands and products thereof, and no use of the surface of the claim or the resources therefrom not reasonably required for carrying on mining or prospecting shall be allowed except as otherwise expressly provided in this Act: Provided, That, unless hereafter specifically authorized, no patent within wilderness areas designated by this Act shall issue after December 31, 1983, except for the valid claims existing on or before December 31, 1983. Mining claims located after September 3, 1964, within the boundaries of wilderness areas designated by this Act shall create no rights in excess of those rights which may be patented under the provisions of this subsection. Mineral leases, permits, and licenses covering lands within national forest wilderness areas designated by this Act shall contain such reasonable stipulations as may

be prescribed by the Secretary of Agriculture for the protection of the wilderness character of the land consistent with the use of the land for the purposes for which they are leased, permitted, or licensed. Subject to valid rights then existing, effective January 1, 1984, the minerals in lands designated by this Act as wilderness areas are withdrawn from all forms of appropriation under the mining laws and from disposition under all laws pertaining to mineral leasing and all amendments thereto.

Water resources and grazing. (4) Within wilderness areas in the national forests designated by this Act, **(1)** the President may, within a specific area and in accordance with such regulations as he may deem desirable, authorize prospecting for water resources, the establishment and maintenance of reservoirs, water-conservation works, power projects, transmission lines, and other facilities needed in the public interest, including the road construction and maintenance essential to development and use thereof, upon his determination that such use or uses in the specific area will better serve the interests of the United States and the people thereof than will its denial; and **(2)** the grazing of livestock, where established prior to September 3, 1964, shall be permitted to continue subject to such reasonable regulations as are deemed necessary by the Secretary of Agriculture.

(5) Other provisions of this Act to the contrary notwithstanding, the management of the Boundary Waters Canoe Area, formerly designated as the Superior, Little Indian Sioux, and Caribou Roadless Areas, in the Superior National Forest, Minnesota, shall be in accordance with regulations established by the Secretary of Agriculture in accordance with the general purpose of maintaining, without unnecessary restrictions on other uses, including that of timber, the primitive character of the area, particularly in the vicinity of lakes, streams, and portages: Provided, That nothing in this Act shall preclude the continuance within the area of any already established use of motorboats.

(6) Commercial services may be performed within the wilderness areas designated by this Act to the extent necessary for activities which are proper for realizing the recreational or other wilderness purposes of the areas.

(7) Nothing in this Act shall constitute an express or implied claim or denial on the part of the Federal Government as to exemption from State water laws.

(8) Nothing in this Act shall be construed as affecting the jurisdiction or responsibilities of the several States with respect to wildlife and fish in the national forests.

STATE AND PRIVATE LANDS WITHIN WILDERNESS AREAS

Section 5.(a) In any case where State -owned or privately owned land is completely surrounded by national forest lands within areas designated by this Act as wilderness, such State or private owner shall be given such rights as may be necessary to assure adequate access to such State -owned or privately owned land by such State or private owner and their successors in interest, or the State -owned land or privately owned land shall be exchanged for federally owned land in the same State of approximately equal value under authorities available to the Secretary of Agriculture:

Transfers, restriction. Provided, however, That the United States shall not transfer to a State or private owner any mineral interests unless the State or private owner relinquishes or causes to be relinquished to the United States the mineral interest in the surrounded land.

(b) In any case where valid mining claims or other valid occupancies are wholly within a designated national forest wilderness area, the Secretary of Agriculture shall, by reasonable regulations consistent with the preservation of the area as wilderness, permit ingress and egress to such surrounded areas by means which have been or are being customarily enjoyed with respect to other such areas similarly situated.

Acquisition. (c) Subject to the appropriation of funds by Congress, the Secretary of Agriculture is authorized to acquire privately owned land within the perimeter of any area designated by this Act as wilderness if **(1)** the owner concurs in such acquisition or **(2)** the acquisition is specifically authorized by Congress.

GIFTS, BEQUESTS, AND CONTRIBUTIONS

Section 6.(a) The Secretary of Agriculture may accept gifts or bequests of land within wilderness areas designated by this Act for preservation as wilderness. The Secretary of Agriculture may also accept gifts or bequests of land adjacent to wilderness areas designated by this Act for preservation as wilderness if he has given sixty days advance notice thereof to the President of the Senate and the Speaker of the House of Representatives. Land

accepted by the Secretary of Agriculture under this section shall be come part of the wilderness area involved. Regulations with regard to any such land may be in accordance with such agreements, consistent with the policy of this Act, as are made at the time of such gift, or such conditions, consistent with such policy, as may be included in, and accepted with, such bequest.

(b) Authorization to accept private contributions and gifts The Secretary of Agriculture or the Secretary of the Interior is authorized to accept private contributions and gifts to be used to further the purposes of this Act.

ANNUAL REPORTS

Section 7. At the opening of each session of Congress, the Secretaries of Agriculture and Interior shall jointly report to the President for transmission to Congress on the status of the wilderness system, including a list and descriptions of the areas in the system, regulations in effect, and other pertinent information, together with any recommendations they may care to make.

APPROVED SEPTEMBER 3, 1964.

Legislative History:

House Reports: No 1538 accompanying H.R. 9070 (Committee on Interior & Insular Affairs) and No. 1829 (Committee of Conference).

Senate report: No. 109 (Committee on Interior & Insular Affairs). Congressional Record: Vol. 109 (1963):

- April 4, 8, considered in Senate.
- April 9, considered and passed Senate.
- Vol. 110 (1964): July 28, considered in House.
- July 30, considered and passed House, amended, in lieu of H.R. 9070
 - August 20, House and Senate agreed to conference report.

Appendix B.

**National Historic Preservation Act of 1966,
As amended through 2006[With annotations]**

[This Act became law on October 15, 1966 (Public Law 89-665; 16 U.S.C. 470 et seq.). Subsequent amendments to the Act include Public Law 91-243, Public Law 93-54, Public Law 94-422, Public Law 94-458, Public Law 96-199, Public Law 96-244, Public Law 96-515, Public Law 98-483, Public Law 99-514, Public Law 100-127, Public Law 102-575, Public Law 103-437, Public Law 104-333, Public Law 106-113, Public Law 106-176, Public Law 106-208, Public Law 106-355, and Public Law 109-453. This description of the Act, as amended, tracts the language of the United States Code except that (in following common usage) we refer to the “Act”(meaning the Act, as amended) rather than to the “subchapter” or the “title” of the Code. This description also excludes some of the notes found in the Code as well as those sections of the amendments dealing with completed reports. Until the Code is updated through the end of the 106th Congress, the Code citations for Sections 308 and 309 are speculative.]

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

Section 1

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

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

[Purpose of the Act]

(b) The Congress finds and declares that —

- (1) the spirit and direction of the Nation are founded upon and reflected in its historic heritage;
- (2) the historical and cultural foundations of the Nation should be preserved as a living part of our community life and development in order to give a sense of orientation to the American people;
- (3) historic properties significant to the Nation's heritage are being lost or substantially altered, often inadvertently, with increasing frequency;
- (4) the preservation of this irreplaceable heritage is in the public interest so that its vital legacy of cultural, educational, aesthetic, inspirational, economic, and energy benefits will be maintained and enriched for future generations of Americans;
- (5) in the face of ever-increasing extensions of urban centers, highways, and residential, commercial, and industrial developments, the present governmental and nongovernmental historic preservation programs and activities are inadequate to insure future generations a genuine opportunity to appreciate and enjoy the rich heritage of our Nation;
- (6) the increased knowledge of our historic resources, the establishment of better means of

identifying and administering them, and the encouragement of their preservation will improve the planning and execution of Federal and federally assisted projects and will assist economic growth and development; and

(7) although the major burdens of historic preservation have been borne and major efforts initiated by private agencies and individuals, and both should continue to play a vital role, it is nevertheless necessary and appropriate for the Federal Government to accelerate its historic preservation programs and activities, to give maximum encouragement to agencies and individuals undertaking preservation by private means, and to assist State and local governments and the National Trust for Historic Preservation in the United States to expand and accelerate their historic preservation programs and activities.

Section 2

[16 U.S.C. 470-1 — Declaration of policy of the Federal Government]

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

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

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

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

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

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

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

TITLE I

Section 101

[16 U.S.C. 470a(a) — National Register of Historic Places, expansion and maintenance]

(a) (1) (A) The Secretary of the Interior is authorized to expand and maintain a National Register of Historic Places composed of districts, sites, buildings, structures, and objects significant in American history, architecture, archaeology, engineering, and culture. Notwithstanding section 1125(c) of Title 15 [of the U.S. Code], buildings and structures on or eligible for inclusion on the National Register of Historic Places (either individually or as part of a historic district), or designated as an individual landmark or as a

contributing building in a historic district by a unit of State or local government, may retain the name historically associated with the building or structure.

[National Historic Landmarks, designation]

(B) Properties meeting the criteria for National Historic Landmarks established pursuant to paragraph (2) shall be designated as "National Historic Landmarks" and included on the National Register, subject to the requirements of paragraph (6). All historic properties included on the National Register on December 12, 1980 [the date of enactment of the National Historic Preservation Act Amendments of 1980], shall be deemed to be included on the National Register as of their initial listing for purposes of this Act. All historic properties listed in the Federal Register of February 6, 1979, as "National Historic Landmarks" or thereafter prior to the effective date of this Act are declared by Congress to be National historic Landmarks of national historic significance as of their initial listing as such in the Federal Register for purposes of this Act and the Act of August 21, 1935 (49 Stat.666) [16 U.S.C. 461 to 467]; except that in cases of National Historic Landmark districts for which no boundaries have been established, boundaries must first be published in the Federal Register.

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

(2) The Secretary in consultation with national historic and archaeological associations, shall establish or revise criteria for properties to be included on the National Register and criteria for National Historic Landmarks, and shall also promulgate or revise regulations as may be necessary for —

- (A) nominating properties for inclusion in, and removal from, the National Register and the recommendation of properties by certified local governments;
- (B) designating properties as National Historic Landmarks and removing such designation;
- (C) considering appeals from such recommendations, nomination, removals, and designations (or any failure or refusal by a nominating authority to nominate or designate);
- (D) nominating historic properties for inclusion in the World Heritage List in accordance with the terms of the Convention concerning the Protection of the World Cultural and Natural Heritage;
- (E) making determinations of eligibility of properties for inclusion on the National Register; and
- (F) notifying the owner of a property, any appropriate local governments, and the general public, when the property is being considered for inclusion on the National Register, for designation as a National Historic Landmark or for nomination to the World Heritage List.

[Nominations to the National Register]

(3) Subject to the requirements of paragraph (6), any State which is carrying out a program approved under subsection (b) of this section, shall nominate to the Secretary properties which meet the criteria promulgated under subsection (a) of this section for inclusion on the National Register. Subject to paragraph (6), any property nominated under this paragraph or under section 110 (a)(2) of this Act shall be included on the

National Register on the date forty-five days after receipt by the Secretary of the nomination and the necessary documentation, unless the Secretary disapproves such nomination within such forty-five day period or unless an appeal is filed under paragraph (5).

[Nominations from individuals and local governments]

(4) Subject to the requirements of paragraph (6) the Secretary may accept a nomination directly from any person or local government for inclusion of a property on the National Register only if such property is located in a State where there is no program approved under subsection (b) of this section. The Secretary may include on the National Register any property for which such a nomination is made if he determines that such property is eligible in accordance with the regulations promulgated under paragraph (2). Such determinations shall be made within ninety days from the date of nomination unless the nomination is appealed under paragraph (5).

[Appeals of nominations]

(5) Any person or local government may appeal to the Secretary a nomination of any historic property for inclusion on the National Register and may appeal to the Secretary the failure or refusal of a nominating authority to nominate a property in accordance with this subsection.

[Owner participation in nomination process]

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

[Regulations for curation, documentation, and local government certification]

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

(A) ensuring that significant prehistoric and historic artifacts, and associated records, subject to section 110 of this Act [16 U.S.C. 470h-2], the Act of June 27, 1960 (16 U.S.C. 469c), and the Archaeological Resources Protection Act of 1979 (16 U.S.C. 470aa and following) are deposited in an institution with adequate long-term curatorial

capabilities;

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

(C) certifying local governments, in accordance with subsection (c)(1) of this section and for the allocation of funds pursuant to section 103 (c) of this Act [16 U.S.C. 470c(c)].

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

(8) The Secretary shall, at least once every 4 years, in consultation with the Council and with State Historic Preservation Officers, review significant threats to properties included in, or eligible for inclusion on, the National Register, in order to —

(A) determine the kinds of properties that may be threatened;

(B) ascertain the causes of the threats; and

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

[16 U.S.C. 470a(b) — State Historic Preservation Programs]

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

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

(A) provides for the designation and appointment by the Governor of a "State Historic Preservation Officer" to administer such program in accordance with paragraph (3) and for the employment or appointment by such officer of such professionally qualified staff as may be necessary for such purposes;

[Designation of the State Review Board]

(B) provides for an adequate and qualified State historic preservation review board designated by the State Historic Preservation Officer unless otherwise provided for by State law; and

(C) provides for adequate public participation in the State Historic Preservation Program, including the process of recommending properties for nomination to the National Register.

[Review of State programs]

(2) (A) Periodically, but not less than every 4 years after the approval of any State program under this subsection, the Secretary, in consultation with the Council on the appropriate provisions of this Act, and in cooperation with the State Historic Preservation Officer, shall evaluate the program to determine whether it is consistent with this Act.

(B) If, at any time, the Secretary determines that a major aspect of a State program is not consistent with this Act, the Secretary shall disapprove the program and suspend in whole or in part any contracts or cooperative agreements with the State and the State

Historic Preservation Officer under this Act, until the program is consistent with this Act, unless the Secretary determines that the program will be made consistent with this Act within a reasonable period of time.

(C) The Secretary, in consultation with State Historic Preservation Officers, shall establish oversight methods to ensure State program consistency and quality without imposing undue review burdens on State Historic Preservation Officers.

(D) At the discretion of the Secretary, a State system of fiscal audit and management may be substituted for comparable Federal systems so long as the State system —

- (i) establishes and maintains substantially similar accountability standards; and
- (ii) provides for independent professional peer review.

The Secretary may also conduct periodic fiscal audits of State programs approved under this section as needed and shall ensure that such programs meet applicable accountability standards.

[SHPO responsibilities]

(3) It shall be the responsibility of the State Historic Preservation Officer to administer the State Historic Preservation Program and to —

- (A) in cooperation with Federal and State agencies, local governments, and private organizations and individuals, direct and conduct a comprehensive statewide survey of historic properties and maintain inventories of such properties;
- (B) identify and nominate eligible properties to the National Register and otherwise administer applications for listing historic properties on the National Register;
- (C) prepare and implement a comprehensive statewide historic preservation plan;
- (D) administer the State program of Federal assistance for historic preservation within the State;
- (E) advise and assist, as appropriate, Federal and State agencies and local governments in carrying out their historic preservation responsibilities;
- (F) cooperate with the Secretary, the Advisory Council on Historic Preservation, and other Federal and State agencies, local governments, and organizations and individuals to ensure that historic properties are taken into consideration at all levels of planning and development;
- (G) provide public information, education, and training, and technical assistance in historic preservation;
- (H) cooperate with local governments in the development of local historic preservation programs and assist local governments in becoming certified pursuant to subsection (c) of this section;
- (I) consult with the appropriate Federal agencies in accordance with this Act on —
 - (i) Federal undertakings that may affect historic properties; and
 - (ii) the content and sufficiency of any plans developed to protect, manage, or to reduce or mitigate harm to such properties; and
- (J) advise and assist in the evaluation of proposals for rehabilitation projects that may qualify for Federal assistance.

[Arrangements with nonprofit organizations]

(4) Any State may carry out all or any part of its responsibilities under this subsection by contract or cooperative agreement with any qualified nonprofit organization or educational institution.

[Approval of existing programs]

(5) Any State historic preservation program in effect under prior authority of law may be treated as an approved program for purposes of this subsection until the earlier of —

(A) the date on which the Secretary approves a program submitted by the State under this subsection, or

(B) three years after October 30, 1992 [the date of the enactment of the National Historic Preservation Act Amendments of 1992].

[Contracts or cooperative agreements with State Historic Preservation Officers]

(6) (A) Subject to subparagraphs (C) and (D), the Secretary may enter into contracts or cooperative agreements with a State Historic Preservation Officer for any State authorizing such Officer to assist the Secretary in carrying out one or more of the following responsibilities within that State —

(i) Identification and preservation of historic properties.

(ii) Determination of the eligibility of properties for listing on the National Register.

(iii) Preparation of nominations for inclusion on the National Register.

(iv) Maintenance of historical and archaeological data bases.

(v) Evaluation of eligibility for Federal preservation incentives.

Nothing in this paragraph shall be construed to provide that any State Historic Preservation Officer or any other person other than the Secretary shall have the authority to maintain the National Register for properties in any State.

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

(A) only if —

(i) the State Historic Preservation Officer has requested the additional responsibility;

(ii) the Secretary has approved the State historic preservation program pursuant to subsection (b)(1) and (2) of this section;

(iii) the State Historic Preservation Officer agrees to carry out the additional responsibility in a timely and efficient manner acceptable to the Secretary and the Secretary determines that such Officer is fully capable of carrying out such responsibility in such manner;

(iv) the State Historic Preservation Officer agrees to permit the Secretary to review and revise, as appropriate in the discretion of the Secretary, decisions made by the Officer pursuant to such contract or cooperative agreement; and

(v) the Secretary and the State Historic Preservation Officer agree on the terms of additional financial assistance to the State, if there is to be any, for the costs of carrying out such responsibility.

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

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

[16 U.S.C. 470a(c) — Certification of local governments]

(c) (1) Any State program approved under this section shall provide a mechanism for the certification by the State Historic Preservation Officer of local governments to carry out the purposes of this Act and provide for the transfer, in accordance with section 103(c) of this Act [16 U.S.C. 470c(c)], of a portion of the grants received by the States under this Act, to such local governments. Any local government shall be certified to participate under the provisions of this section if the applicable State Historic Preservation Officer, and the Secretary, certifies that the local government —

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

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

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

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

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

Where there is no approved State program, a local government may be certified by the Secretary if he determines that such local government meets the requirements of subparagraphs

(A) through (E); and in any such case the Secretary may make grants-in-aid to the local government for purposes of this section.

[Participation of certified local governments in National Register nominations]

(2) (A) Before a property within the jurisdiction of the certified local government may be considered by the State to be nominated to the Secretary for inclusion on the National Register, the State Historic Preservation Officer shall notify the owner, the applicable chief local elected official, and the local historic preservation commission. The commission, after reasonable opportunity for public comment, shall prepare a report as to whether or not such property, in its opinion, meets the criteria of the National Register. Within sixty days of notice from the State Historic Preservation Officer, the chief local elected official shall transmit the report of the commission and his recommendation to the state Historic Preservation Officer. Except as provided in subparagraph (B), after receipt of such report and recommendation, or if no such report and recommendation are received within sixty days, the State shall make the nomination pursuant to subsection (a) of this subsection. The State may expedite such process with the concurrence of the certified local government.

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

(3) Any local government certified under this section or which is making efforts to become so certified shall be eligible for funds under the provision of section 103 (c) of

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

[Definitions]

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

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

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

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

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

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

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

[Indian Tribes may assume State Historic Preservation Officer functions]

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

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

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

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

(D) the Secretary determines, after consultation with the tribe, the appropriate State Historic Preservation Officer, the Council (if the tribe proposes to assume the functions of the State Historic Preservation Officer with respect to review of undertakings under section 106 of this Act), and other tribes, if any, whose tribal or aboriginal lands may

be affected by conduct of the tribal preservation program —

- (i) that the tribal preservation program is fully capable of carrying out the functions specified in the plan provided under subparagraph (C);
- (ii) that the plan defines the remaining responsibilities of the Secretary and the State Historic Preservation Officer; and
- (iii) that the plan provides, with respect to properties neither owned by a member of the tribe nor held in trust by the Secretary for the benefit of the tribe, at the request of the owner thereof, the State Historic Preservation Officer, in addition to the tribal preservation official, may exercise the historic preservation responsibilities in accordance with subsections (b)(2) and (b)(3) of this section; and

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

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

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

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

(B) the Secretary finds that the tribal historic preservation program has been demonstrated

to be sufficient to carry out the contract or cooperative agreement and this Act; and

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

- (i) the tribe's traditional cultural authorities;
- (ii) representatives of other tribes whose traditional lands are under the jurisdiction of the tribe assuming responsibilities; and
- (iii) the interested public.

(5) The Council may enter into an agreement with an Indian tribe to permit undertakings on tribal land to be reviewed under tribal historic preservation regulations in place of review under regulations promulgated by the Council to govern compliance with section 106 of this Act, if the Council, after consultation with the tribe and appropriate State Historic Preservation Officers, determines that the tribal preservation regulations will afford historic properties consideration equivalent to those afforded by the Council's regulations.

[Traditional religious and cultural properties may be eligible for listing in the National Register]

(6) (A) Properties of traditional religious and cultural importance to an Indian tribe or Native Hawaiian organization may be determined to be eligible for inclusion on the National Register.

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

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

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

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

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

[16 U.S.C. 470a(e) — Grants to States]

(e) (1) The Secretary shall administer a program of matching grants to the States for the purposes of carrying out this Act.

[Grants to the National Trust]

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

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

(3) (A) In addition to the programs under paragraphs (1) and (2), the Secretary shall administer a program of direct grants for the preservation of properties included on the National Register. Funds to support such program annually shall not exceed 10 per centum of the amount appropriated annually for the fund established under section 108 of this Act. These grants may be made by the Secretary, in consultation with the appropriate State Historic Preservation Officer —

(i) for the preservation of National Historic Landmarks which are threatened with demolition or impairment and for the preservation of historic properties of World Heritage significance,

(ii) for demonstration projects which will provide information concerning professional methods and techniques having application to historic properties,

(iii) for the training and development of skilled labor in trades and crafts, and in analysis and curation, relating to historic preservation, and

(iv) to assist persons or small businesses within any historic district included in the National Register to remain within the district.

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

(B) The Secretary may also, in consultation with the appropriate State Historic

Preservation Officer, make grants or loans or both under this section to Indian tribes and to nonprofit organizations representing ethnic or minority groups for the preservation of their cultural heritage.

(C) Grants may be made under subparagraph (A)(i) and (iv) only to the extent that the project cannot be carried out in as effective a manner through the use of an insured loan under section 104 of this Act.

[Grants for religious properties]

(4) Grants may be made under this subsection for the preservation, stabilization, restoration, or rehabilitation of religious properties listed in the National Register of Historic Places, provided that the purpose of the grant is secular, does not promote religion, and seeks to protect those qualities that are historically significant. Nothing in this paragraph shall be construed to authorize the use of any funds made available under this section for the acquisition of any property referred to in the preceding sentence.

[Direct grants to Indian tribes and Native Hawaiian organizations]

(5) The Secretary shall administer a program of direct grants to Indian tribes and Native Hawaiian organizations for the purpose of carrying out this Act as it pertains to Indian tribes and Native Hawaiian organizations. Matching fund requirements may be modified. Federal funds available to a tribe or Native Hawaiian organization may be used as matching funds for the purposes of the tribe's or organization's conducting its responsibilities pursuant to this section.

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

(6) (A) As a part of the program of matching grant assistance from the Historic Preservation Fund to States, the Secretary shall administer a program of direct grants to the Federated States of Micronesia, the Republic of the Marshall Islands, the Trust Territory of the Pacific Islands, and upon termination of the Trusteeship Agreement for the Trust Territory of the Pacific Islands, the Republic of Palau (referred to as the Micronesian States) in furtherance of the Compact of Free Association between the United States and the Federated States of Micronesia and the Marshall Islands, approved by the Compact of Free Association Act of 1985 (48 U.S.C. 1681 note), the Trusteeship Agreement for the Trust Territory of the Pacific Islands, and the Compact of Free Association between the United States and Palau, approved by the Joint Resolution entitled "Joint Resolution to approve the 'Compact of Free Association' between the United States and Government of Palau, and for other purposes" (48 U.S.C. 1681 note). The goal of the program shall be to establish historic and cultural preservation programs that meet the unique needs of each Micronesian State so that at the termination of the compacts the programs shall be firmly established. The Secretary may waive or modify the requirements of this section to conform to the cultural setting of those nations.

(B) The amounts to be made available to the Micronesian States shall be allocated by the Secretary on the basis of needs as determined by the Secretary. Matching funds may be waived or modified.

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

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

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

(g) In consultation with the Advisory Council on Historic Preservation, the Secretary shall promulgate guidelines for Federal agency responsibilities under section 110 of this Act.

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

(h) Within one year after December 12, 1980 [the date of enactment of the National Historic Preservation Act Amendments of 1980], the Secretary shall establish, in consultation with the Secretaries of Agriculture and Defense, the Smithsonian Institution, and the Administrator of the General Services Administration, professional standards for the preservation of historic properties in Federal ownership or control.

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

(i) The Secretary shall develop and make available to Federal agencies, State and local governments, private organizations and individuals, and other nations and international organizations pursuant to the World Heritage Convention, training in, and information concerning, professional methods and techniques for the preservation of historic properties and for the administration of the historic preservation program at the Federal, State, and local level. The Secretary shall also develop mechanisms to provide information concerning historic preservation to the general public including students.

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

(j) (1) The Secretary shall, in consultation with the Council and other appropriate Federal, tribal, Native Hawaiian, and non-Federal organizations, develop and implement a comprehensive preservation education and training program.

(2) The education and training program described in paragraph (1) shall include —

(A) new standards and increased preservation training opportunities for Federal workers involved in preservation-related functions;

(B) increased preservation training opportunities for other Federal, State, tribal and local government workers, and students;

(C) technical or financial assistance, or both, to historically black colleges and universities, to tribal colleges, and to colleges with a high enrollment of Native Americans or Native Hawaiians, to establish preservation training and degree programs; and

(D) coordination of the following activities, where appropriate, with the National Center for Preservation Technology and Training —

(i) distribution of information on preservation technologies;

(ii) provision of training and skill development in trades, crafts, and disciplines related to historic preservation in Federal training and development programs; and

(iii) support for research, analysis, conservation, curation, interpretation, and display related to preservation.

Section 102

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

(a) No grant may be made under this Act —

(1) unless application therefore is submitted to the Secretary in accordance with regulations and procedures prescribed by him;

(2) unless the application is in accordance with the comprehensive statewide historic preservation plan which has been approved by the Secretary after considering its relationship to the comprehensive statewide outdoor recreation plan prepared pursuant to the Land and Water Conservation Fund Act of 1965 (78 Stat. 897) [16 U.S.C. 4601-4];

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

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

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

(6) until the grantee has complied with such further terms and conditions as the Secretary may deem necessary or advisable. Except as permitted by other law, the State share of the costs referred to in paragraph (3) shall be contributed by non-Federal sources.

Notwithstanding any other provision of law, no grant made pursuant to this Act shall be treated as taxable income for purposes of the Internal Revenue Code of 1986 [Title 26 of the U.S. Code].

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

(b) The Secretary may in his discretion waive the requirements of subsection (a), paragraphs (2) and (5) of

this section for any grant under this Act to the National Trust for Historic Preservation in the United States.

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

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

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

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

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

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

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

Section 103

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

(a) The amounts appropriated and made available for grants to the States for the purposes of this Act shall be apportioned among the States by the Secretary on the basis of needs as determined by him.

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

(b) The amounts appropriated and made available for grants to the States for projects and programs under this Act for each fiscal year shall be apportioned among the States as the Secretary determines to be appropriate. The Secretary shall notify each State of its apportionment under this subsection within thirty days following the date of enactment of legislation appropriating funds under this Act. Any amount of any apportionment that has not been paid or obligated by the Secretary during the fiscal year in which such notification is given and for two fiscal years thereafter, shall be reapportioned by the Secretary in accordance with this subsection. The Secretary shall analyze and revise as necessary the method of apportionment. Such method and any revision thereof shall be published by the Secretary in the Federal Register.

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

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

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

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

Section 104

[16 U.S.C. 470d(a) — Insured loans for National Register]

(a) The Secretary shall establish and maintain a program by which he may, upon application of a private lender, insure loans (including loans made in accordance with a mortgage) made by such lender to finance any project for the preservation of a property included on the National Register.

[16 U.S.C. 470d(b) — Requirements]

(b) A loan may be insured under this section only if —

- (1) the loan is made by a private lender approved by the Secretary as financially sound and able to service the loan properly;
- (2) the amount of the loan, and interest rate charged with respect to the loan, do not exceed such amount, and such a rate, as is established by the Secretary, by rule;
- (3) the Secretary has consulted the appropriate State Historic Preservation Officer concerning the preservation of the historic property;
- (4) the Secretary has determined that the loan is adequately secured and there is reasonable assurance of repayment;
- (5) the repayment period of the loan does not exceed the lesser of forty years or the expected life of the asset financed;
- (6) the amount insured with respect to such loan does not exceed 90 per centum of the loss sustained by the lender with respect to the loan; and
- (7) the loan, the borrower, and the historic property to be preserved meet other terms and conditions as may be prescribed by the Secretary, by rule, especially terms and conditions relating to the nature and quality of the preservation work.

[Interest rates]

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

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

(c) The aggregate unpaid principal balance of loans insured under this section and outstanding at any one time may not exceed the amount which has been covered into the Historic Preservation Fund pursuant to section 108 of this Act and subsections (g) and (i) of this section, as in effect on December 12, 1980 [the date of the enactment of the Act], but which has not been appropriated for any purpose.

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

(d) Any contract of insurance executed by the Secretary under this section may be assignable, shall be an obligation supported by the full faith and credit of the United States, and shall be incontestable except for fraud or misrepresentation of which the holder had actual knowledge at the time it became a holder.

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

(e) The Secretary shall specify, by rule and in each contract entered into under this section, the conditions and method of payment to a private lender as a result of losses incurred by the lender on any loan insured under this section.

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

(f) In entering into any contract to insure a loan under this section, the Secretary shall take steps to assure adequate protection of the financial interests of the Federal Government. The Secretary may —

- (1) in connection with any foreclosure proceeding, obtain, on behalf of the Federal Government, the property securing a loan insured under this title; and
- (2) operate or lease such property for such period as may be necessary to protect the interest of the Federal Government and to carry out subsection (g) of this section.

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

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

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

[16 U.S.C. 470d(h) — Fees]

(h) The Secretary may assess appropriate and reasonable fees in connection with insuring loans under this section. Any such fees shall be covered into the Historic Preservation Fund, in addition to the amounts covered into such fund pursuant to section 108 of this Act and subsection (g) of this section, and shall remain available in such fund until appropriated by the Congress to carry out the purposes of this Act.

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

(i) Notwithstanding any other provision of law, any loan insured under this section shall be treated as non-Federal funds for the purposes of satisfying any requirement of any other provision of law under which Federal funds to be used for any project or activity are conditioned upon the use of non-Federal funds by the recipient for payment of any portion of the costs of such project or activity.

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

(j) Effective after the fiscal year 1981 there are authorized to be appropriated, such sums as may be necessary to cover payments incurred pursuant to subsection (e) of this section.

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

(k) No debt obligation which is made or committed to be made, or which is insured or committed to be insured, by the Secretary under this section shall be eligible for purchase by, or commitment to purchase by, or sale or issuance to, the Federal Financing Bank.

Section 105

[16 U.S.C. 470e — Recordkeeping]

The beneficiary of assistance under this Act shall keep such records as the Secretary shall prescribe, including records which fully disclose the disposition by the beneficiary of the proceeds of such assistance, the total cost of the project or undertaking in connection with which such assistance is given or used, and the amount and nature of that portion of the cost of the project or undertaking supplied by other sources, and such other records as will facilitate an effective audit.

Section 106

[16 U.S.C. 470f — Advisory Council on Historic Preservation, comment on Federal undertakings]

The head of any Federal agency having direct or indirect jurisdiction over a proposed Federal or federally assisted undertaking in any State and the head of any Federal department or independent agency having authority to license any undertaking shall, prior to the approval of the expenditure of any Federal funds on the undertaking or prior to the issuance of any license, as the case may be, take into account the effect of the undertaking on any district, site, building, structure, or object that is included in or eligible for inclusion in the National Register. The head of any such Federal agency shall afford the Advisory Council on Historic Preservation established under Title II of this Act a reasonable opportunity to comment with regard to such undertaking.

Section 107

[16 U.S.C. 470g — Exemption of White House, Supreme Court, and Capitol]

Nothing in this Act shall be construed to be applicable to the White House and its grounds, the Supreme Court building and its grounds, or the United States Capitol and its related buildings and grounds.

Section 108

[16 U.S.C. 470h — Establishment of Historic Preservation Fund; authorization for appropriations]

To carry out the provisions of this Act, there is hereby established the Historic Preservation Fund (hereafter referred to as the "fund") in the Treasury of the United States. There shall be covered into such fund \$24,400,000 for fiscal year 1977, \$100,000,000 for fiscal year 1978, \$100,000,000 for fiscal year 1979, \$150,000,000 for fiscal year 1980 and \$150,000,000 for fiscal year 1981 and \$150,000,000 for each of fiscal years 1982 through 2015, from revenues due and payable to the United States under the Outer Continental Shelf Lands Act (67 Stat. 462, 469) as amended (43 U.S.C. 1338), and/or under section 7433(b) of Title 10, notwithstanding any provision of law that such proceeds shall be credited to miscellaneous receipts of the Treasury. Such moneys shall be used only to carry out the purposes of this Act and shall be available for expenditure only when appropriated by the Congress. Any moneys not appropriated shall remain available in the fund until appropriated for said purposes: *Provided*, That appropriations made pursuant to this paragraph may be made without fiscal year limitation.

Section 109

[16 U.S.C. 470h-1(a) — Donations to the Secretary]

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

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

(b) In expending said funds, the Secretary shall give due consideration to the following factors: the national significance of the project; its historical value to the community; the imminence of its destruction or loss; and the expressed intentions of the donor. Funds expended under this subsection shall be made available without regard to the matching requirements established by section 102 of this Act, but the recipient of such funds shall be permitted to utilize them to match any grants from the Historic Preservation Fund established by section 108 of this Act.

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

(c) The Secretary is hereby authorized to transfer unobligated funds previously donated to the Secretary for purposes of the National Park Service, with the consent of the donor, and any funds so transferred shall be used or expended in accordance with the provisions of this Act.

Section 110

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

(a) (1) The heads of all Federal agencies shall assume responsibility for the preservation of historic properties which are owned or controlled by such agency. Prior to acquiring, constructing, or leasing buildings for purposes of carrying out agency responsibilities, each Federal agency shall use, to the maximum extent feasible, historic properties available to the agency in accordance with Executive Order No. 13006, issued May 21, 1996 (61 Fed. Reg. 26071). Each agency shall undertake, consistent with the preservation of such properties and the mission of the agency and the professional standards established pursuant to section 101(g) of this Act, any preservation, as may be necessary to carry out this section.

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

(2) Each Federal agency shall establish (unless exempted pursuant to Section 214) of this Act, in consultation with the Secretary, a preservation program for the identification, evaluation, and nomination to the National Register of Historic Places, and protection of historic properties. Such program shall ensure —

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

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

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

(D) that the agency's preservation-related activities are carried out in consultation with other Federal, State, and local agencies, Indian tribes, Native Hawaiian organizations carrying out historic preservation planning activities, and with the private sector; and

- (E) that the agency's procedures for compliance with section 106 of this Act —
- (i) are consistent with regulations issued by the Council pursuant to section 211 of this Act;
 - (ii) provide a process for the identification and evaluation of historic properties for listing in the National Register and the development and implementation of agreements, in consultation with State Historic Preservation Officers, local governments, Indian tribes, Native Hawaiian organizations, and the interested public, as appropriate, regarding the means by which adverse effects on such properties will be considered; and
 - (iii) provide for the disposition of Native American cultural items from Federal or tribal land in a manner consistent with section 3(c) of the Native American Grave Protection and Repatriation Act (25 U.S.C. 3002(c)).

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

(b) Each Federal agency shall initiate measures to assure that where, as a result of Federal action or assistance carried out by such agency, an historic property is to be substantially altered or demolished, timely steps are taken to make or have made appropriate records, and that such records then be deposited, in accordance with section 101(a) of this Act, in the Library of Congress or with such other appropriate agency as may be designated by the Secretary, for future use and reference.

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

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

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

(d) Consistent with the agency's mission and mandates, all Federal agencies shall carry out agency programs and projects (including those under which any Federal assistance is provided or any Federal license, permit, or other approval is required) in accordance with the purposes of this Act and, give consideration to programs and projects which will further the purposes of this Act.

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

(e) The Secretary shall review and approve the plans of transferees of surplus federally owned historic properties not later than ninety days after his receipt of such plans to ensure that the prehistorical, historical, architectural, or culturally significant values will be preserved or enhanced.

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

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

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

(g) Each Federal agency may include the costs of preservation activities of such agency under this Act as eligible project costs in all undertakings of such agency or assisted by such agency. The eligible project costs may also include amounts paid by a Federal agency to any State to be used in carrying out such preservation responsibilities of the Federal agency under this Act, and reasonable costs may be charged to Federal licensees and permittees as a condition to the issuance of such license or permit.

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

(h) The Secretary shall establish an annual preservation awards program under which he may make monetary awards in amounts not to exceed \$1,000 and provide citations for special achievements to officers and employees of Federal, State, and certified local governments in recognition of their outstanding contributions to the preservation of historic resources. Such program may include the issuance of annual awards by the President of the United States to any citizen of the United States recommended for such award by the Secretary.

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

(i) Nothing in this Act shall be construed to require the preparation of an environmental impact statement where such a statement would not otherwise be required under the National Environmental Policy Act of 1969 [42 U.S.C. 4321 et seq.], and nothing in this Act shall be construed to provide any exemption from any requirement respecting the preparation of such a statement under such Act.

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

(j) The Secretary shall promulgate regulations under which the requirements of this section may be waived in whole or in part in the event of a major natural disaster or an imminent threat to the national security.

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

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

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

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

Section 111

[16 U.S.C. 470h-3(a) — Lease or exchange of Federal historic property]

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

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

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

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

(c) The head of any Federal agency having responsibility for the management of any historic property may, after consultation with the Advisory Council on Historic Preservation, enter into contracts for the management of such property. Any such contract shall contain such terms and conditions as the head of such agency deems necessary or appropriate to protect the interests of the United States and insure adequate preservation of historic property.

Section 112

[16 U.S.C. 470h-4(a) — Each Federal agency is to protect historic resources through professionalism of employees and contractors]

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

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

(B) Agency personnel or contractors responsible for historic resources shall meet qualification standards established by the Office of Personnel Management in consultation with the Secretary and appropriate professional societies of the disciplines involved. The Office of Personnel Management shall revise qualification standards within 2 years after October 30, 1992, [the date of enactment of the 1992 Amendments to this Act] for the disciplines involved, specifically archaeology, architecture, conservation, curation, history, landscape architecture, and planning. Such standards

shall consider the particular skills and expertise needed for the preservation of historic resources and shall be equivalent requirements for the disciplines involved.

[Maintaining permanent databases]

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

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

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

- (1) provide information to the owners of properties containing historic (including architectural, curatorial, and archaeological) resources with demonstrated or likely research significance, about the need for protection of such resources, and the available means of protection;
- (2) encourage owners to preserve such resources intact and in place and offer the owners of such resources information on the tax and grant assistance available for the donation of the resources or of a preservation easement of the resources;

[Encourage protection of Native American cultural items and properties]

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

[Conduct archeological excavations to meet Federal standards, allow access to artifacts for research, consult with Indian tribe or Native Hawaiian organization if related items likely]

- (4) encourage owners who are undertaking archaeological excavations to —
 - (A) conduct excavations and analyses that meet standards for federally-sponsored excavations established by the Secretary;
 - (B) donate or lend artifacts of research significance to an appropriate research institution;
 - (C) allow access to artifacts for research purposes; and
 - (D) prior to excavating or disposing of a Native American cultural item in which an Indian tribe or Native Hawaiian organization may have an interest under section 3(a)(2) (B) or (C) of the Native American Grave Protection and Repatriation Act (25 U.S.C. 3002(a)(2) (B) and (C)), given notice to and consult with such Indian tribe or Native Hawaiian organization.

Section 113

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

(a) In order to help control illegal interstate and international traffic in antiquities, including archaeological, curatorial, and architectural objects, and historical documents

of all kinds, the Secretary shall study and report on the suitability and feasibility of alternatives for controlling illegal interstate and international traffic in antiquities.

[16 U.S.C. 470h-5(b) — Consultation]

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

[16 U.S.C. 470h-5(c) — Report]

(c) Not later than 18 months after October 30, 1992 [the date of enactment of this section], the Secretary shall submit to Congress a report detailing the Secretary's findings and recommendations from the study described in subsection (a) of this section.

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

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

TITLE II

Section 201

[16 U.S.C. 470i(a) — Advisory Council on Historic Preservation; membership]

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

- (1) a Chairman appointed by the President selected from the general public;
- (2) the Secretary of the Interior;
- (3) the Architect of the Capitol;
- (4) the Secretary of Agriculture and the heads of seven other agencies of the United States (other than the Department of the Interior), the activities of which affect historic preservation, designated by the President;
- (5) one Governor appointed by the President;
- (6) one mayor appointed by the President;
- (7) the President of the National Conference of State Historic Preservation Officers;
- (8) the Chairman of the National Trust for Historic Preservation;
- (9) four experts in the field of historic preservation appointed by the President from the disciplines of architecture, history, archaeology, and other appropriate disciplines;
- (10) three at-large members from the general public, appointed by the President; and
- (11) one member of an Indian tribe or Native Hawaiian organization who represents the interests of the tribe or organization of which he or she is a member, appointed by the President.

[16 U.S.C. 470i(b) — Designees]

(b) Each member of the Council specified in paragraphs (2) through (8) other than (6) of subsection (a) of this section may designate another officer of his department, agency, or

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

[16 U.S.C. 470i(c) — Term of office]

(c) Each member of the Council appointed under paragraph (1), and under paragraphs (9) through (11) of subsection (a) of this section shall serve for a term of four years from the expiration of his predecessor's term; except that the members first appointed under that paragraph shall serve for terms of one to four years, as designated by the President at the time of appointment, in such manner as to insure that the terms of not more than two of them will expire in any one year. The members appointed under paragraphs (5) and (6) shall serve for the term of their elected office but not in excess of four years. An appointed member may not serve more than two terms. An appointed member whose term has expired shall serve until that member's successor has been appointed.

[16 U.S.C. 470i(d) — Vacancies]

(d) A vacancy in the Council shall not affect its powers, but shall be filled not later than sixty days after such vacancy commences, in the same manner as the original appointment (and for the balance of any unexpired terms). The members of the Advisory Council on Historic Preservation appointed by the President under this Act as in effect on the day before December 12, 1980 [the enactment of the National Historic Preservation Act Amendments of 1980], shall remain in office until all members of the Council, as specified in this section, have been appointed. The members first appointed under this section shall be appointed not later than one hundred and eighty days after December 12, 1980 [the enactment of the National Historic Preservation Act Amendments of 1980].

[16 U.S.C. 470i(e) — Vice Chairman]

(e) The President shall designate a Vice Chairman, from the members appointed under paragraphs (5), (6), (9), or (10). The Vice Chairman may act in place of the Chairman during the absence or disability of the Chairman or when the office is vacant.

[16 U.S.C. 470i(f) — Quorum]

(f) 12 members of the Council shall constitute a quorum.

Section 202

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

(a) The Council shall —

- (1) advise the President and the Congress on matters relating to historic preservation; recommend measures to coordinate activities of Federal, State, and local agencies and private institutions and individuals relating to historic preservation; and advise on the dissemination of information pertaining to such activities;
- (2) encourage, in cooperation with the National Trust for Historic Preservation and appropriate private agencies, public interest and participation in historic preservation;
- (3) recommend the conduct of studies in such areas as the adequacy of legislative and administrative statutes and regulations pertaining to historic preservation activities of State and local governments and the effects of tax policies at all levels of government on historic preservation;

- (4) advise as to guidelines for the assistance of State and local governments in drafting legislation relating to historic preservation;
- (5) encourage, in cooperation with appropriate public and private agencies and institutions, training and education in the field of historic preservation;
- (6) review the policies and programs of Federal agencies and recommend to such agencies methods to improve the effectiveness, coordination, and consistency of those policies and programs with the policies and programs carried out under this Act; and
- (7) inform and educate Federal agencies, State and local governments, Indian tribes, other nations and international organizations and private groups and individuals as to the Council's authorized activities.

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

(b) The Council shall submit annually a comprehensive report of its activities and the results of its studies to the President and the Congress and shall from time to time submit such additional and special reports as it deems advisable. Each report shall propose such legislative enactments and other actions as, in the judgment of the Council, are necessary and appropriate to carry out its recommendations and shall provide the Council's assessment of current and emerging problems in the field of historic preservation and an evaluation of the effectiveness of the programs of Federal agencies, State and local governments, and the private sector in carrying out the purposes of this Act.

Section 203

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

The Council is authorized to secure directly from any department, bureau, agency, board, commission, office, independent establishment or instrumentality of the executive branch of the Federal Government information, suggestions, estimates, and statistics for the purpose of this title of the Act; and each such department, bureau, agency, board, commission, office, independent establishment or instrumentality is authorized to furnish such information, suggestions, estimates, and statistics to the extent permitted by law and within available funds.

Section 204

[16 U.S.C. 470l — Compensation of members]

The members of the Council specified in paragraphs (2), (3), and (4) of section 201(a) shall serve without additional compensation. The other members of the Council shall receive \$100 per diem when engaged in the performance of the duties of the Council. All members of the Council shall receive reimbursement for necessary traveling and subsistence expenses incurred by them in the performance of the duties of the Council.

Section 205

[16 U.S.C. 470m(a) — Executive Director]

(a) There shall be an Executive Director of the Council who shall be appointed in the competitive service by the Chairman with the concurrence of the Council. The Executive Director shall report directly to the Council and perform such functions and duties as the Council may prescribe.

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

(b) The Council shall have a General Counsel, who shall be appointed by the Executive Director. The General Counsel shall report directly to the Executive Director and serve as the Council's legal advisor. The Executive Director shall appoint such other attorneys as may be necessary to assist the General Counsel, represent the Council in courts of law whenever appropriate, including enforcement of agreements with Federal agencies to which the Council is a party, assist the Department of Justice in handling litigation concerning the Council in courts of law, and perform such other legal duties and functions as the Executive Director and the Council may direct.

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

(c) The Executive Director of the Council may appoint and fix the compensation of such officers and employees in the competitive service as are necessary to perform the functions of the Council at rates not to exceed that now or hereafter prescribed for the highest rate for grade 15 of the General Schedule under section 5332 of title 5 [United States Code]: *Provided, however*, That the Executive Director, with the concurrence of the Chairman, may appoint and fix the compensation of not to exceed five employees in the competitive service at rates not to exceed that now or hereafter prescribed for the highest rate of grade 17 of the General Schedule under section 5332 of Title 5 [United States Code].

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

(d) The Executive Director shall have power to appoint and fix the compensation of such additional personnel as may be necessary to carry out its duties, without regard to the provisions of the civil service laws and the Classification Act of 1949 [chapter 51 and subchapter III of chapter 53 of Title 5, U.S. Code].

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

(e) The Executive Director of the Council is authorized to procure expert and consultant services in accordance with the provisions of section 3109 of title 5 [United States Code].

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

(f) Financial and administrative services (including those related to budgeting, accounting, financial reporting, personnel and procurement) shall be provided the Council by the Department of the Interior or, at the discretion of the Council, such other agency or private entity that reaches an agreement with the Council, for which payments shall be made in advance or by reimbursement from funds of the Council in such amounts as may be agreed upon by the Chairman of the Council and the head of the agency or, in the case of a private entity, the authorized representative of the private entity that will provide the services. When a Federal agency affords such services, the regulations of that agency for the collection of indebtedness of personnel resulting from erroneous payments (5 U.S.C. 5514(b)) shall apply to the collection of erroneous payments made to or on behalf of a Council employee and regulations of that agency for the administrative control of funds (31 U.S.C. 1513(d), 1514) shall apply to appropriations of the Council. The Council shall not be required to prescribe such regulations.

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

(g) Any Federal agency may provide the Council, with or without reimbursement as may be agreed upon by the Chairman and the agency, with such funds, personnel, facilities, and services under their jurisdiction and control as may be needed by the Council to carry out its duties, to the extent that such funds, personnel, facilities, and services are requested by the Council and are otherwise available for that purpose. Any funds provided to the Council pursuant to this subsection must be expended by the end of the fiscal year following the fiscal year in which the funds are received by the Council. To the extent of available appropriations, the Council may obtain, by purchase, rental, donation, or otherwise, such additional property, facilities, and services as may be needed to carry out its duties and may also receive donations of moneys for such purpose, and the Executive Director is authorized, in his discretion, to accept, hold, use, expend, and administer the same for the purposes of this Act.

Section 206

[16 U.S.C. 470n(a) — International Centre for the Study of the Preservation and Restoration of Cultural Property; authorization]

(a) The participation of the United States as a member of the International Centre for the Study of the Preservation and Restoration of Cultural Property is hereby authorized.

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

(b) The Council shall recommend to the Secretary of State, after consultation with the Smithsonian Institution and other public and private organizations concerned with the technical problems of preservation, the members of the official delegation which will participate in the activities of the Centre on behalf of the United States. The Secretary of State shall appoint the members of the official delegation from the persons recommended to him by the Council.

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

(c) For the purposes of this section there is authorized to be appropriated an amount equal to the assessment for United States membership in the Centre for fiscal years 1979, 1980, 1981, and 1982: *Provided*, That no appropriation is authorized and no payment shall be made to the Centre in excess of 25 per centum of the total annual assessment of such organization. Authorization for payment of such assessment shall begin in fiscal year 1981, but shall include earlier costs.

Section 207

[16 U.S.C. 470o — Transfer of personnel, funds, etc. to the Council]

So much of the personnel, property, records, and unexpended balances of appropriations, allocations, and other funds employed, held, used, programmed, or available or to be made available by the Department of the Interior in connection with the functions of the Council, as the Director of the Office of Management and Budget shall determine, shall be transferred from the Department to the Council within 60 days of the effective date of this Act [Pub. L. 94-422, September 28, 1976].

Section 208

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

Any employee in the competitive service of the United States transferred to the Council under the provisions of this section shall retain all rights, benefits, and privileges pertaining thereto held prior to such transfer.

Section 209

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

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

Section 210

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

No officer or agency of the United States shall have any authority to require the Council to submit its legislative recommendations, or testimony, or comments on legislation to any officer or agency of the United States for approval, comments, or review, prior to the submission of such recommendations, testimony, or comments to the Congress. In instances in which the Council voluntarily seeks to obtain the comments or review of any officer or agency of the United States, the Council shall include a description of such actions in its legislative recommendations, testimony, or comments on legislation which it transmits to the Congress.

Section 211

[16 U.S.C. 470s — Regulations for Section 106; local government participation]

The Council is authorized to promulgate such rules and regulations as it deems necessary to govern the implementation of section 106 of this Act in its entirety. The Council shall, by regulation, establish such procedures as may be necessary to provide for participation by local governments in proceedings and other actions taken by the Council with respect to undertakings referred to in section 106 of this Act which affect such local governments.

Section 212

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

(a) The Council shall submit its budget annually as a related agency of the Department of the Interior. There are authorized to be appropriated such amounts as may be necessary to carry out this title.

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

(b) Whenever the Council submits any budget estimate or request to the President or the Office of Management and Budget, it shall concurrently transmit copies of that estimate or request to the House and Senate Appropriations Committees and the House Committee on Natural Resources and the Senate Committee on Energy and Natural Resources.

Section 213

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

To assist the Council in discharging its responsibilities under this Act, the Secretary at the request of the Chairman, shall provide a report to the Council detailing the significance of

any historic property, describing the effects of any proposed undertaking on the affected property, and recommending measures to avoid, minimize, or mitigate adverse effects.

Section 214

[16 U.S.C. 470v — Exemptions for Federal activities from provisions of the Act]

The Council, with the concurrence of the Secretary, shall promulgate regulations or guidelines, as appropriate, under which Federal programs or undertakings may be exempted from any or all of the requirements of this Act when such exemption is determined to be consistent with the purposes of this Act, taking into consideration the magnitude of the exempted undertaking or program and the likelihood of impairment of historic properties.

Section 215

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

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

Section 216

[16 U.S.C. 470v-2(a) — Cooperative Agreements]

(a) The Council may enter into a cooperative agreement with any Federal agency that administers a grant or assistance program for the purpose of improving the effectiveness of the administration of such program in meeting the purposes and policies of this Act. Such cooperative agreements may include provisions that modify the selection criteria for a grant or assistance program to further the purposes of this Act or that allow the Council to participate in the selection of recipients, if such provisions are not inconsistent with the grant or assistance program's statutory authorization and purpose.

[16 U.S.C. 470v-2(b) — Review of Grant and Assistance Programs]

(b) The Council may —

- (1) review the operation of any Federal grant or assistance program to evaluate the effectiveness of such program in meeting the purposes and policies of this Act;
- (2) make recommendations to the head of any Federal agency that administers such program to further the consistency of the program with the purposes and policies of the Act and to improve its effectiveness in carrying out those purposes and policies; and
- (3) make recommendations to the President and Congress regarding the effectiveness of Federal grant and assistance programs in meeting the purposes and policies of this Act, including recommendations with regard to appropriate funding levels.

TITLE III

Section 301

[16 U.S.C. 470w — Definitions]

As used in this Act, the term —

- (1) "**Agency**" means agency as such term is defined in section 551 of title 5 [United States Code].

- (2) "**State**" means any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, the Virgin Islands, American Samoa, the Commonwealth of the Northern Mariana Islands, and the Trust Territory of the Pacific Islands, the Republic of the Marshall Islands, the Federated States of Micronesia, and, upon termination of the Trusteeship Agreement for the Trust Territory of the Pacific Islands, the Republic of Palau.
- (3) "**Local government**" means a city, county, parish, township, municipality, or borough, or any other general purpose political subdivision of any State.
- (4) "**Indian tribe**" or "**tribe**" means an Indian tribe, band, nation, or other organized group or community, including a Native village, Regional Corporation or Village Corporation, as those terms are defined in section 3 of the Alaska Native Claims Settlement Act [43 U.S.C. 1602], which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.
- (5) "**Historic property**" or "**historic resource**" means any prehistoric or historic district, site, building, structure, or object included in, or eligible for inclusion on the National Register, including artifacts, records, and material remains related to such a property or resource.
- (6) "**National Register**" or "**Register**" means the National Register of Historic Places established under section 101 of this Act.
- (7) "**Undertaking**" means a project, activity, or program funded in whole or in part under the direct or indirect jurisdiction of a Federal agency, including —
- (A) those carried out by or on behalf of the agency;
 - (B) those carried out with Federal financial assistance;
 - (C) those requiring a Federal permit license, or approval; and
 - (D) those subject to State or local regulation administered pursuant to a delegation or approval by a Federal agency.
- (8) "**Preservation**" or "**historic preservation**" includes identification, evaluation, recordation, documentation, curation, acquisition, protection, management, rehabilitation, restoration, stabilization, maintenance, research, interpretation, conservation, and education and training regarding the foregoing activities, or any combination of the foregoing activities.
- (9) "**Cultural park**" means a definable area which is distinguished by historic resources and land related to such resources and which constitutes an interpretive, educational, and recreational resource for the public at large.
- (10) "**Historic conservation district**" means an area which contains
- (A) historic properties,
 - (B) buildings having similar or related architectural characteristics,
 - (C) cultural cohesiveness, or
 - (D) any combination of the foregoing.
- (11) "**Secretary**" means the Secretary of the Interior acting through the Director of the National Park Service except where otherwise specified.
- (12) "**State Historic Preservation Review Board**" means a board, council, commission, or other similar collegial body established as provided in section 101(b)(1)(B) of this Act
- (A) the members of which are appointed by the State Historic Preservation Officer (unless otherwise provided for by State law),
 - (B) a majority of the members of which are professionals qualified in the following and related disciplines: history, prehistoric and historic archaeology, architectural history,

architecture, folklore, cultural anthropology, curation, conservation, and landscape architecture, and

(C) which has the authority to —

(i) review National Register nominations and appeals from nominations;

(ii) review appropriate documentation submitted in conjunction with the Historic Preservation Fund;

(iii) provide general advice and guidance to the State Historic Preservation Officer; and

(iv) perform such other duties as may be appropriate.

(13) "**Historic preservation review commission**" means a board, council, commission, or other similar collegial body which is established by State or local legislation as provided in section 101(c)(1)(B) of this Act, and the members of which are appointed, unless otherwise provided by State or local legislation, by the chief elected official of the jurisdiction concerned from among —

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

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

(14) "**Tribal lands**" means —

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

(B) all dependent Indian communities.

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

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

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

(18) "**Native Hawaiian organization**" means any organization which —

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

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

(C) has demonstrated expertise in aspects of historic preservation that are culturally significant to Native Hawaiians. The term includes, but is not limited to, the Office of Hawaiian Affairs of the State of Hawaii and Hui Malama I Na Kupuna O Hawai'i Nei, an organization incorporated under the laws of the State of Hawaii.

Section 302

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

Where appropriate, each Federal agency is authorized to expend funds appropriated for its authorized programs for the purposes of activities carried out pursuant to this Act, except to the extent appropriations legislation expressly provides otherwise.

Section 303

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

(a) The Secretary is authorized to accept donations and bequests of money and personal property for the purposes of this Act and shall hold, use, expend, and administer the same for such purposes.

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

(b) The Secretary is authorized to accept gifts or donations of less than fee interests in any historic property where the acceptance of such interests will facilitate the conservation or preservation of such properties. Nothing in this section or in any provision of this Act shall be construed to affect or impair any other authority of the Secretary under other provision of law to accept or acquire any property for conservation or preservation or for any other purpose.

Section 304

[16 U.S.C. 470w-3(a) — Confidentiality of the location of sensitive historic resources]

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

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

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

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

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

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

Section 305

[16 U.S.C. 470w-4 — Attorneys' fees]

In any civil action brought in any United States district court by any interested person to enforce the provisions of this Act, if such person substantially prevails in such action, the court may award attorneys' fees, expert witness fees, and other costs of participating in such action, as the court deems reasonable.

Section 306

[16 U.S.C. 470w-5(a) — National Center for the Building Arts]

(a) In order to provide a national center to commemorate and encourage the building arts and to preserve and maintain a nationally significant building which exemplifies the great achievements of the building arts in the United States, the Secretary and the Administrator of the General Services Administration are authorized and directed to enter into a cooperative agreement with the Committee for a National Museum of the Building

Arts, Incorporated, a nonprofit corporation organized and existing under the laws of the District of Columbia, or its successor, for the operation of a National Museum for the Building Arts in the Federal Building located in the block bounded by Fourth Street, Fifth Street, F Street, and G Street, Northwest in Washington, District of Columbia. Such museum shall —

- (1) collect and disseminate information concerning the building arts, including the establishment of a national reference center for current and historic documents, publications, and research relating to the building arts;
- (2) foster educational programs relating to the history, practice and contribution to society of the building arts, including promotion of imaginative educational approaches to enhance understanding and appreciation of all facets of the building arts;
- (3) publicly display temporary and permanent exhibits illustrating, interpreting and demonstrating the building arts;
- (4) sponsor or conduct research and study into the history of the building arts and their role in shaping our civilization; and
- (5) encourage contributions to the building arts.

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

- (b) The cooperative agreement referred to in subsection (a) of this section shall include provisions which —
- (1) make the site available to the Committee referred to in subsection (a) of this section without charge;
 - (2) provide, subject to available appropriations, such maintenance, security, information, janitorial and other services as may be necessary to assure the preservation and operation of the site; and
 - (3) prescribe reasonable terms and conditions by which the Committee can fulfill its responsibilities under this Act.

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

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

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

- (d) The renovation of the site shall be carried out by the Administrator with the advice of the Secretary. Such renovation shall, as far as practicable —
- (1) be commenced immediately,
 - (2) preserve, enhance, and restore the distinctive and historically authentic architectural character of the site consistent with the needs of a national museum of the building arts and other compatible use, and
 - (3) retain the availability of the central court of the building, or portions thereof, for appropriate public activities.

[16 U.S.C. 470w-5(e) — Annual report]

(e) The Committee shall submit an annual report to the Secretary and the Administrator concerning its activities under this section and shall provide the Secretary and the Administrator with such other information as the Secretary may, from time to time, deem necessary or advisable.

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

(f) For purposes of this section, the term "**building arts**" includes, but shall not be limited to, all practical and scholarly aspects of prehistoric, historic, and contemporary architecture, archaeology, construction, building technology and skills, landscape architecture, preservation and conservation, building and construction, engineering, urban and community design and renewal, city and regional planning, and related professions, skills, trades, and crafts.

Section 307

[16 U.S.C. 470w-6(a) — Effective date of regulations]

(a) No final regulation of the Secretary shall become effective prior to the expiration of thirty calendar days after it is published in the Federal Register during which either or both Houses of Congress are in session.

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

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

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

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

[16 U.S.C. 470w-6(d) — Definitions]

(d) For the purposes of this section-

- (1) continuity of session is broken only by an adjournment sine die; and
- (2) the days on which either House is not in session because of an adjournment of more than three days to a day certain are excluded in the computation of sixty and ninety calendar days of continuous session of Congress.

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

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

Section 308

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

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

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

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

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

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

(3) (A) Except as provided in subparagraph (B), the Administrator shall convey, by quitclaim deed, without consideration, all right, title, and interest of the United States in and to the historic light station, subject to the conditions set forth in subsection (c) after the Secretary's selection of an eligible entity. The conveyance of a historic light station under this section shall not be subject to the provisions of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11301 et seq.) or section 416(d) of the Coast Guard Authorization Act of 1998 (Public Law 105-383).

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

(ii) If the Secretary approves the conveyance of a historic light station referenced in this paragraph, such conveyance shall be subject to the conditions set forth in subsection (c) and any other terms or conditions the Secretary considers necessary to protect the resources of the park unit or wildlife refuge.

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

(iv) For those historic light stations referenced in this paragraph, the Secretary is

encouraged to enter into cooperative agreements with appropriate eligible entities, as provided in this Act, to the extent such cooperative agreements are consistent with the Secretary's responsibilities to manage and administer the park unit or wildlife refuge, as appropriate.

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

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

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

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

(C) the eligible entity to which the historic light station is conveyed under this section shall not interfere or allow interference in any manner with any Federal aid to navigation, nor hinder activities required for the operation and maintenance of any Federal aid to navigation, without the express written permission of the head of the agency responsible for maintaining the Federal aid to navigation;

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

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

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

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

(H) the United States shall have the right, at any time, to enter the historic light station conveyed under this section without notice, for purposes of operating, maintaining, and inspecting any aid to navigation and for the purpose of ensuring compliance

with this subsection, to the extent that it is not possible to provide advance notice.

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

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

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

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

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

(D) the eligible entity to which the historic light station is conveyed, sells, conveys, assigns, exchanges, or encumbers the historic light station, any part thereof, or any associated historic artifact, without approval of the Secretary;

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

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

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

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

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

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

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

[16 U.S.C. 470w-7(e) — Definitions]

(e) For purposes of this section:

(1) The term “**Administrator**” shall mean the Administrator of General Services.

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

(3) The term “**eligible entity**” shall mean:

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

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

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

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

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

(5) The term “**Secretary**” means the Secretary of the Interior.

Section 309

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

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

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

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

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

(2) under the administrative control of the Coast Guard shall be credited to the Coast Guard's Operating Expenses appropriation account, and shall be available for obligation and expenditure for the maintenance of light stations remaining under the administrative

control of the Coast Guard, such funds to remain available until expended and shall be available in addition to funds available in the Operating Expense appropriation for this purpose. There are hereby authorized to be appropriated to the Secretary of the Interior such sums as may be necessary to carry out this Act.

TITLE IV

Section 401

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

The Congress finds and declares that, given the complexity of technical problems encountered in preserving historic properties and the lack of adequate distribution of technical information to preserve such properties, a national initiative to coordinate and promote research, distribute information, and provide training about preservation skills and technologies would be beneficial.

Section 402

[16 U.S.C. 470x-1— Definitions]

For the purposes of this title —

- (1) The term "**Board**" means the National Preservation Technology and Training Board established pursuant to section 404 of this Act.
- (2) The term "**Center**" means the National Center for Preservation Technology and Training established pursuant to section 403 of this Act.
- (3) The term "**Secretary**" means the Secretary of the Interior.

Section 403

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

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

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

(b) The purposes of the Center shall be to —

- (1) develop and distribute preservation and conservation skills and technologies for the identification, evaluation, conservation, and interpretation of prehistoric and historic resources;
- (2) develop and facilitate training for Federal, State and local resource preservation professionals, cultural resource managers, maintenance personnel, and others working in the preservation field;
- (3) take steps to apply preservation technology benefits from ongoing research by other agencies and institutions;
- (4) facilitate the transfer of preservation technology among Federal agencies, State and local governments, universities, international organizations, and the private sector; and
- (5) cooperate with related international organizations including, but not limited to the International Council on Monuments and Sites, the International Center for the Study of Preservation and Restoration of Cultural Property, and the International Council on Museums.

[16 U.S.C. 470x-2(c) — Programs]

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

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

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

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

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

Section 404

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

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

[16 U.S.C. 470x-3(b) — Duties]

(b) The Board shall —

- (1) provide leadership, policy advice, and professional oversight to the Center;
- (2) advise the Secretary on priorities and the allocation of grants among the activities of the Center; and
- (3) submit an annual report to the President and the Congress.

[16 U.S.C. 470x-3(c) — Membership]

(c) The Board shall be comprised of —

- (1) The Secretary, or the Secretary's designee;
- (2) 6 members appointed by the Secretary who shall represent appropriate Federal, State, and local agencies, State and local historic preservation commissions, and other public and international organizations; and
- (3) 6 members appointed by the Secretary on the basis of outstanding professional qualifications who represent major organizations in the fields of archaeology, architecture, conservation, curation, engineering, history, historic preservation, landscape architecture, planning, or preservation education.

Section 405

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

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

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

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

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

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

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

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

[16 U.S.C. 470x-4(d) — Standards]

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

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

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

Section 406

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

(a) The Center may accept —

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

(2) transfers of funds from other Federal agencies.

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

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

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

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

Section 407

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

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

[Addendum]

[National Historic Preservation Act Amendments of 1980, Public Law 96-515, December 12, 1980, 94 Stat. 3000 This addendum contains related legislative provisions enacted in the National Historic Preservation Act Amendments of 1980 but that are not part of the National Historic Preservation Act.]

Section 401

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

(a) The Secretary of the Interior shall direct and coordinate United States participation in the Convention Concerning the Protection of the World Cultural and Natural Heritage, approved by the Senate on October 26, 1973, in cooperation with the Secretary of State, the Smithsonian Institution, and the Advisory Council on Historic Preservation.

Whenever possible, expenditures incurred in carrying out activities in cooperation with other nations and international organizations shall be paid for in such excess currency of the country or area where the expense is incurred as may be available to the United States.

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

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

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

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

Section 402

[16 U.S.C. 470a-2 — International Federal activities affecting historic properties]

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

Appendix C.

Interview Guide

This interview will ask you questions about the management of historic structures in wilderness areas based on Forest Service Policy, The NHPA, ARPA, and the Wilderness Act. Your real name will be kept confidential, being known only to myself. Any quotations in the final document will reference Respondent "X". Do you agree under these criteria to the taping of this interview?

The purpose of this study is to work towards proposing specific management guidance, or protocol, regarding historic structures in wilderness areas. Findings and recommendations will be presented in the form of a professional paper and shared with all who participates as well as with the Region 1 Historic Preservation Team and wilderness managers.

Why conducting interview

Tell me about your background with the Forest Service, specifically the positions you have occupied and where they were located

What do you believe to be the Forest Service's management objectives for historic structures in wilderness areas?

Do you believe the Forest Service desire to keep historic structures in wilderness areas?

Do you believe the Forest Service manage historic structures in wilderness to maximize their scientific and public benefits?

What is your opinion regarding the presence of historic structures in wilderness?

Do you believe management of historic structures in wilderness should be conducted for long-term use and enjoyment by the public?

Do you have an interest in preserving historic structures?
(-if they do not say, ask how they developed that interest)

Why do you feel the need to take on the care of historic structures in wilderness? (if not exactly within their job to do so)

What is the biggest problem you have encountered when dealing with historic structures in wilderness?

Walk me through a typical process for you when working with a historic structure in wilderness. Once you have established you would like to do preservation work on a historic structure in a wilderness area, what is the typical process you go through in order to complete the desired work?

Do you feel since the Wilderness Act defines wilderness as an area without permanent presence of man that animosity is created in some Forest Service circles toward historic structures being preserved in wilderness?

Do you believe there is a challenge for the Forest Service to meet legal responsibilities concerning the care of cultural resources, such as historic structures in wilderness?

FSM 2360.12 directs Federal agencies to inventory cultural resources. Are there up to date inventories of historic structures in wilderness areas on your forest?
(If so are the structures monitored/evaluated regularly?)

What do you believe should be an appropriate amount of time between structure evaluations after initial inventory (example – every two years, every 5 years...?)

What does the Forest Service do to protect historic structures in wilderness from the adverse effects of agency authorized project undertakings, unauthorized use, and environmental damage?

Do you feel the Forest Service has met its objective (FSM 2360.2) as a leader in preserving America's heritage through responsible stewardship activities that recognize, preserve, protect, enhance, and use cultural resources for the greatest public benefit?

Section 1 (7) of the National Historic Preservation Act (NHPA) states, "It is nevertheless necessary and appropriate for the Federal Government to accelerate its historic preservation programs and activities". Do you feel the Forest Service complies with this statement when managing historic structures in wilderness areas?

Section 110, being the proactive section of the NHPA, calls for attention to be given to the historic, archaeological, architectural, and cultural values of heritage resources. How has the Forest Service complied with this proactive direction to manage historic structures in wilderness?

Do structures in your wilderness areas that are part of agency administrative use have more value/priority/attention than say a trapper's cabin, kiln or other regionally significant historic structure?

Do structures on the forest that are already on, or identified for, the rental program receive more funding and attention than those in wilderness areas because they generate funds?

Generally speaking, how much of your forest's budget is devoted to cultural resource management? Is this enough money to do a first rate professional management job? When you want to do work on historic structures in wilderness what specific fund codes pay for the work? Why these codes?

The FS has had success with PIT projects. Do you think the Forest Service should aggressively pursue volunteer programs like this in order to aid in the management and care of historic structures in wilderness areas?

(-what would hinder this approach?)

The National Park Service Historic Preservation Training Center trains employees to be Masters in carpentry, masonry, and wood crafting. Would you be willing to partner with groups such as these in order to help with historic structure management?

(-what would hinder this approach?)

Would there be benefits in implementing a paraprofessional program for historic structure management?

Does the Forest Service provide ample training opportunities in cultural resource management and/or historic preservation?

What kinds of training opportunities are available for historic structure stabilization and preservation? Do people make use of these training opportunities? Why or why not?

Does the Forest Service require employees to complete any specific training in order to conduct work on historic structures in wilderness?

(Is this training important?)

Does the Forest Service encourage employees to seek out such training opportunities?

How do Project Managers, District Rangers and Forest Supervisors receive information and advice on appropriate management for historic structures in wilderness areas? In your experience are managers open to this advice and do they follow it?

Do you believe if more attention is focused on these historic structures that there would be significant increases in visitor concentration in the area of structures perhaps causing the need for increased policing of human activity in wilderness areas?

Do you have any closing thoughts you would like to share with me?

Appendix D.

SUBJECT INFORMATION AND INFORMED CONSENT

Title: The Forest Service Management of Historic Structures in Wilderness Areas

Project Director(s):

Molly Ryan University of Montana Graduate Student
Cell: (406) 925-0649 Work: (406) 329-3046

Perry Brown University of Montana, Faculty Supervisor (406) 243-4689

The purpose of this study will examine how the Forest Service manages historic structures in its wilderness areas. Your help with this study may help towards proposing specific management guidance, or protocol, regarding historic structures in wilderness areas. While reading this consent form, if anything is not clear to you, please ask the person who gave you this form to provide more detail. The interview will take approximately one hour to complete. You will be asked questions relating to personal experiences, Forest Service Policy and federal regulations such as the Wilderness Act. There is no anticipated discomfort for those contributing to this study, so risk to you is minimal. In order to assure confidentiality, your identity will be kept confidential, known only to the primary investigator. If quoted in the data, you will be cited as Respondent "X". This key code will cross-reference you name to a letter. This key code is kept separate from the data and its content will only be known to the primary investigator. After completion of work, the primary investigator will erase any tapes and documents linking your true identity to the research.

Although we believe that the risk of taking part in this study is minimal, the following liability statement is required in all University of Montana consent forms.

In the event that you are injured as a result of this research you should individually seek appropriate medical treatment. If the injury is caused by the negligence of the University or any of its employees, you may be entitled to reimbursement or compensation pursuant to the Comprehensive State Insurance Plan established by the Department of Administration under the authority of M.C.A., Title 2, Chapter 9. In the event of a claim for such injury, further information may be obtained from the University's Claims representative or University Legal Counsel. (Reviewed by University Legal Counsel, July 6, 1993)

Your decision to take part in this research study is entirely voluntary. If you have any questions about the research now or during the study contact: Molly Ryan at (406) 925-0649.

I have read the above description of this research study. I have been informed of the risks and benefits involved, and all my questions have been answered to my satisfaction. Furthermore, I have been assured that any future questions I may have will also be answered by a member of the research team. I voluntarily agree to take part in this study. I understand I will receive a copy of this consent form.

Printed (Typed) Name of Subject

Subject's Signature

Date

Statement of Consent to be Audiotaped

I have read the above description of this research study. I have been informed of the risks and benefits involved, and all my questions have been answered to my satisfaction. I consent to the interview being audio recorded. I understand that audio recordings will be destroyed following transcription, and that no identifying information will be included in the final data.

Subject's Signature

Date

Appendix E.

SUBJECT INFORMATION AND INFORMED CONSENT – PHONE SCRIPT**Title: The Forest Service Management of Historic Structures in Wilderness Areas****Project Director(s):**

Molly Ryan University of Montana Graduate Student
Cell: (406) 925-0649 Work: (406) 329-3046

Perry Brown University of Montana, Faculty Supervisor (406) 243-4689

I will now read you the Interview Subject Information and Consent Form. If anything is unclear, please ask me to clarify at anytime. After I finish reading the guidelines I will ask if you agree to participate in the interview

The purpose of this study will examine how the Forest Service manages historic structures in its wilderness areas. Your help with this study may help towards proposing specific management guidance, or protocol, regarding historic structures in wilderness areas. The interview will take approximately one hour to complete. You will be asked questions relating to personal experiences, Forest Service Policy and federal regulations such as the Wilderness Act. There is no anticipated discomfort for those contributing to this study, so risk to you is minimal. In order to assure confidentiality, your identity will be kept confidential, known only to the primary investigator. If quoted in the data, you will be cited as Respondent "X". After completion of work, the primary investigator will erase any tapes and documents linking your true identity to the research.

All interviews, in person and over the phone will be audio taped to assure accuracy of data and to accommodate the approximate one hour it will take to conduct the interview. All audio recordings will be destroyed following transcription and no identifying information will be included in the final data.

Your decision to take part in this research study is entirely voluntary. If you have any questions about the research now or during the study contact: myself (Molly Ryan) at (406) 925-0649 or (406) 329-3046

Do you understand what I have just read? Do you agree to be interviewed under these guidelines? (Subject will state name and answer)

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The House That Smokey Built: The Forest Service Management of Historic Structures in Wilderness

Molly Michelle Ryan
The University of Montana

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