



Preserving America's Heritage

**Mr. John L. Nau, III
Chairman
Advisory Council on Historic Preservation**

**Testimony
Before the Subcommittee on National Parks
United States House of Representatives**

**Oversight Hearing on the National Historic Preservation Act
April 21, 2005**

My name is John L. Nau, III, and I am pleased to submit my testimony on behalf of the Advisory Council on Historic Preservation (ACHP). At the outset, let me note the ACHP's appreciation for the continued interest and support that the Committee has demonstrated for the ACHP and the Federal historic preservation program. We view our relationship with the Committee as an essential ingredient of developing and implementing an effective national historic preservation program. We look forward to working closely with you on the future development of this important legislation.

I would also like to express my pleasure with the speed with which the Committee has addressed the important issue of reauthorization of the ACHP and the Historic Preservation Fund. We are gratified that the Committee is taking up these issues early in the session and we are eager to assist you in bringing this legislative initiative to fruition. There are elements of the legislation, embodied in the discussion draft bill, that are crucial to the effective functioning of the national historic preservation program and we join with the Administration and our preservation partners to urge their early enactment.

By way of background, let me state for the record that the ACHP sought reauthorization legislation in the previous Congress, and the necessary provisions, along with a short list of operational improvements, was introduced by former Chairman Radanovich as H.R. 3223. This Committee held a hearing June 3, 2003, and I had the pleasure of testifying. With the Committee's permission, I would like to submit my written statement from that hearing for the record, as it provides detailed information about the ACHP, its need for reauthorization, and the provisions of last session's bill, which are largely incorporated into the current discussion draft.

We were disappointed that H.R. 3223 was not enacted in the 108th Congress, but we look at it as the benchmark for legislation now being considered. During development of H.R. 3223, the Committee brought to our attention several concerns with the operation of the historic preservation program and we endeavored to work cooperatively to address the Committee's concerns. We intend that this spirit shared by the ACHP and the Committee that produced H.R. 3223 will continue as we move forward.

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As the President's appointee to lead the principal Federal agency charged with advising the President and the Congress on historic preservation matters, I find much to support in the bill. However, the inclusion of certain provisions, as drafted, seems to challenge some of the fundamental principles embodied in the National Historic Preservation Act (NHPA). Since its enactment in 1966, the NHPA has served preservation and our Nation well.

Let me start by summarizing those provisions that are needed and desirable improvements in the NHPA. First, the discussion draft would extend the authorization for \$150 million annually from the proceeds of oil and gas leases on the Outer Continental Shelf to be made available for the Historic Preservation Fund. We believe this concept of using part of the proceeds from the depletion of the Nation's non-renewable resources to preserve and enhance another non-renewable resource, our cultural heritage, is sound and merits continuation. The Fund supports the valuable activities of the various State Historic Preservation Officers and Tribal Historic Preservation Officers, our principal partners in carrying out the NHPA's authorities. In addition, the Fund makes possible the President's proposed *Preserve America* grants program. Extending this authority through FY 2012 is essential and is welcomed by the ACHP.

Second, we strongly support the provisions of H.R. 3223 that have been incorporated into the discussion draft. Amendments that expand the membership of the ACHP, provide the ACHP with flexibility in the provision of administrative services and its donations account, and offer it new opportunities to cooperate with Federal agencies to help them advance historic preservation goals through their assistance programs, along with some necessary technical amendments, are all positive features and are supported by the ACHP. We thank you for their inclusion.

We welcome the Committee's attention to a key need of the ACHP, the extension of its appropriations authority. As requested by the Administration and embodied in H.R. 3223, the NHPA would be amended to provide the ACHP with a permanent appropriations authority. This would recognize the ACHP's important, permanent program responsibilities within the administrative structure created by the NHPA and place the ACHP on an even footing with its sister Federal agencies.

The discussion draft before us today has reverted to a time limited and capped appropriation authorization. We believe that this approach to authorization is contrary to the central role that the ACHP plays in the national historic preservation program, which is a permanent assignment that does not diminish over time. The ACHP is rare among Federal agencies in having a statutory charge to advise and report to both the President and the Congress, thus providing the ACHP with a special ongoing interaction with the Congress and this Committee. We believe that this close working relationship diminishes the need for a periodic formal legislative reauthorization process.

Furthermore, the amounts specified in the proposed annual authorization are below our FY 2005 appropriation and the President's FY 2006 request. The authorization ceilings in the discussion draft for FY 2007 through FY 2012 also are below what we anticipate will be the President's requests, simply based on the routine escalation of the costs of doing business at current levels. It was this exact problem that brought us to the 108th Congress seeking an appropriations authorization two years before our existing authorization expired.

I would now like to turn to two new provisions in the discussion draft that were not included in H.R. 3223. These are found in Sections 2, 3, and 4 of the discussion draft. Sections 2 and 3 address a concern that was raised in the 2003 hearings before this Committee with regard to the protection of the rights of property owners in the nomination process for the National Register of Historic Places. Without recounting the details of the case brought to the Committee's attention, the essence of the issue was that

the NHPA currently provides the opportunity for a property owner to object to the listing of his or her property on the National Register of Historic Places.

The National Register was created by the Congress in 1966 to provide a comprehensive listing of properties significant in the Nation's history, architecture, archeology, culture, and engineering, at the national, State, and local level. This listing was to be used as a guide to the historic properties that warranted Federal financial assistance and consideration in the Federal project planning process. However, the intended comprehensive list has not been completed, due to the limited resources available to State Historic Preservation Officers for this task.

In 1980, responding to certain negative tax implications from National Register listing, Congress introduced a provision allowing an owner to object to formal listing, thereby avoiding the detrimental economic consequences imposed by the Internal Revenue Code should the property be redeveloped. The amended NHPA barred listing in the National Register over an owner's objection, but directed the Secretary of the Interior to make a formal determination of eligibility for the National Register in the case of any property nomination submitted to the Secretary over an owner's objection.

Over the past quarter century much has changed. The negative tax consequences of National Register listing have been abolished and accordingly listing no longer impacts a property owner's rights through the workings of Federal preservation law. Unfortunately, outside of the sphere of Federal law and policy, certain local laws, although rare, have used the Federal designation process as the basis for the application of stringent local preservation restrictions. This has presented the issue of "linkage," i.e., a local regulatory consequence that flows from the Federal National Register nomination process regardless of a property owner's objection to the nomination. This was the situation that brought the case of a Los Angeles property owner to the Committee's attention at its 2003 hearing.

While the ACHP sees this situation as rare, nevertheless we worked with the Committee staff, in the form of a drafting service and in fulfillment of our NHPA charge to advise both the executive and legislative branches on preservation matters, to prepare an appropriate legislative solution. Those discussions resulted in three potential amendments to the NHPA. First, the current requirement that the Secretary make a formal determination of a property's eligibility for the National Register when a nomination was submitted over an owner's objection would be stricken. This seemed reasonable, in that the owner had expressed disapproval of formal designation by raising the objection. Continued processing, even for the less formal eligibility determination, seemed on its face at odds with respecting the owner's stated objection. With regard to the unintended linkage to local law that seriously impeded the use of the Los Angeles property in ways that were not intended by the NHPA, the change appeared to address the problem in large part. This provision is found in the first part of Section 2(a) of the discussion draft.

Closely related to this was the idea that, if an owner lodges an objection as provided for in the NHPA, the nomination process should not be allowed to move forward. In the Los Angeles case, the subsequent processing of the nomination, despite the property owner's objection, gave rise to a local decision to impose the local landmark restrictions. This outcome was clearly contrary to the intent of the Congress when it amended the NHPA in 1980. As a result, our discussions with Committee staff led to the development of a provision that the owner's objection would halt any further processing of the nomination process. The current version of that provision is found in the second part of Section 2(a) of the discussion draft.

The provisions that the ACHP assisted in developing have been altered in the discussion draft. While the first component is essentially the same, the discussion draft introduces a new phrase that goes beyond our discussions and causes us concern. That is the addition of the language "including making any determination regarding the eligibility of the property or district for such inclusion or designation." While the intent of this language is unclear, we are concerned that it may extend the owner objection provision

beyond the confines of the formal National Register nomination procedure and impact the process used in the Federal project planning process mandated by Section 106 of the NHPA. We recommend to the Committee that this additional language be removed. The previously outlined provisions provide a significant and sufficient protection for property owners.

Our principal concern with the discussion draft is found in Section 4. That section proposes a significant change in the current scope of the fundamental Federal protection for historic properties that the Congress enacted in 1966 and expanded in 1976. As currently written, Section 106 of the NHPA requires Federal agencies to take into account the effect of their undertakings on properties listed *or eligible for listing* in the National Register of Historic Places. In its wisdom, the Congress recognized in 1976, ten years after the passage of the original NHPA and the creation of the National Register, that the National Register was a work in progress and would remain so for many years to come. As noted above, it was simply not possible to complete statewide surveys of historic properties with the amount of resources being made available. Likewise, the passage of time inevitably leads to additional properties meeting the criteria for listing in the National Register. Taking a page from President Nixon's Executive Order 11593 of 1971, the Congress amended Section 106 to require Federal agencies to consider eligible as well as formally listed properties in the Federal historic preservation review process.

Since 1976, this expanded Section 106 process has served both the Federal Government and the Nation's cultural patrimony well. Implemented by rules issued by the ACHP, the process requires Federal agencies to make a reasonable and good faith effort to identify historic properties that are listed or may meet the criteria for listing in the National Register when they may be impacted by a Federal action. The involved Federal agencies determine what historic resources are present and may be impacted by their actions. The process has become well integrated into Federal project planning and results in even-handed consideration of historic property impacts as an integral part of environmental assessment and decision-making.

Section 4 of the discussion draft would fundamentally alter this established process. It would limit the Federal agency obligation to consider only those properties that had been previously formally listed in the National Register or formally determined eligible for the National Register by the Secretary of the Interior. I must emphasize for the Committee that most historic properties that are actually eligible for the National Register have not gone through the formal nomination and designation process. Likewise, few have been formally determined eligible for the National Register by the Secretary for the simple reason that essentially the only route to such a determination is through the previously described process of a nomination moving forward to the Secretary when an owner objects. These cases are few and far between.

The routine eligibility determination for Section 106 purposes is made by consensus between the State Historic Preservation Officer and the Federal agency with a limited degree of formality and paperwork. By practice, these "consensus" determinations of eligibility efficiently provide the agency with the basic information it needs to factor historic preservation impacts into planning. Section 106 does not provide a listed or eligible property with absolute protection from harm; far from it, the process simply requires the Federal agency to consider the potential impacts and assess options to minimize that harm.

The proposed amendment would eliminate the current obligation of Federal agencies to take affirmative steps to identify properties not yet formally recognized as historic but that might be impacted by a Federal project. Lest one infer that such properties are of minor or marginal significance, let me note but a few of the historic properties that have been brought into Section 106 review through the current eligibility system: the World Trade Center Site, and Saarinen's TWA Terminal, in New York City; the historic Del Monte Hotel in Monterey, California; the Chancellorsville Historic District adjacent to Chancellorsville National Battlefield Park, Virginia; Murphy Farm, a site significant in the history of the NAACP located

next to Harpers Ferry National Historical Park, West Virginia; and the building where the first atomic bomb was assembled at Los Alamos, New Mexico. In each of these cases, important historic properties were saved through consideration in the Section 106 process, which could not have happened if the proposed amendment to Section 106 had been law.

I particularly want to draw the Committee's attention to two classes of historic resources that would virtually fall off the Section 106 review table if Section 4 were enacted. First, by their nature, archeological sites are rarely known until Federal project-driven surveys uncover them. The devastation to that heritage would be dramatic. Many such sites are associated with Native American heritage; other important sites include the colonial-era African Burial Ground in New York City and the Kanaka Village Site at the Hudson Bay Company's Fort Vancouver in Oregon. But for the current determination of eligibility process, these sites would have been destroyed without any consideration by Federal project planners.

Second, in 1990, Congress made it clear that the National Register and the protections of Section 106 extend to historic properties of traditional religious and cultural significance to Native Americans and Native Hawaiians. Regrettably, through no fault of Indian tribes and Native Hawaiian organizations, the National Register currently contains but a small sampling of the sites that these parties hold as sacred elements of their cultural heritage. Enactment of Section 4 would strip Indian tribes and Native Hawaiian organizations of any effective use of Section 106 to protect their irreplaceable heritage. On that ground alone, I would strongly oppose the suggested amendment to Section 106.

It is important to bring to the Committee's attention that the existing Section 106 regulations provide useful tools to flex and modify the Section 106 process to ensure that its goals are reasonably met. The ACHP can point proudly to its use of these tools in just the past three years to adjust and streamline the process to adapt Section 106 to new challenges and contemporary needs.

- We have used the authority to exempt Federal activities affecting certain kinds of resources to deal with historic interstate pipelines, such as the famous "Big Inch" and "Little Inch" pipelines that contributed to the winning of World War II, and the management of the Interstate Highway System, which must be recognized as the most significant public works project of the 20th century and has shaped our lives today. Through these exemptions, the historic importance of these properties has been recognized without imposing the formal requirements of Section 106 reviews.
- We have issued simplified program comments to deal with nearly 30,000 units of Cold War-era military housing that warrant consideration as historically significant, thereby eliminating thousands of potential individual Section 106 reviews.
- We have recently adopted a programmatic agreement that streamlines and simplifies the process for considering the impact of federally licensed wireless communication towers in a way that introduces certainty and finality to the Federal Communications Commission's regulation of cell tower construction.

These administrative solutions were developed in cooperation with Federal agencies and demonstrate the ACHP's commitment to use the tools found in existing law to provide practical answers to problems they encounter in the Section 106 process. In doing so, we improve program efficiency while honoring the fundamental principles of the NHPA. I strongly believe that these kinds of administrative and regulatory solutions, rather than legislative alteration of the important protections of Section 106, can resolve any concerns that the discussion draft seeks to address.

In sum, the discussion draft contains important amendments to the NHPA that need enactment. We applaud and support those provisions that will continue and strengthen the role of the ACHP and the

Historic Preservation Fund, with the substitution of the language in H.R. 3223 as it pertains to the ACHP authorization. However, the ACHP opposes legislative alteration of Section 106 as proposed in the discussion draft. Our established administrative processes, with a recent and demonstrated track record, can address changing needs, and we are committed to use them to solve emerging problems. We hope the Committee will endorse the current system, which has been carefully tuned and refined over the years, and refrain from embarking on a path of unnecessary alteration of the NHPA.

We welcome the opportunity to work with the Committee to examine ways that we can refine and strengthen our capacity to address its concerns.

TESTIMONY FOR THE RECORD

**SUBMITTED BY JOHN L. NAU, III
CHAIRMAN, ADVISORY COUNCIL ON HISTORIC PRESERVATION**

**TO THE SUBCOMMITTEE ON NATIONAL PARKS, RECREATION, AND PUBLIC LANDS
THE HONORABLE GEORGE RADANOVICH, CHAIRMAN**

**OVERSIGHT HEARING ON REAUTHORIZATION OF THE
ADVISORY COUNCIL ON HISTORIC PRESERVATION
AND
THE NATIONAL HISTORIC PRESERVATION ACT
JUNE 3, 2003**

SUMMARY STATEMENT

An independent Federal agency, the Advisory Council on Historic Preservation (ACHP) promotes historic preservation nationally by providing a forum for influencing Federal activities, programs, and policies that impact historic properties. In furtherance of this objective, the ACHP seeks reauthorization of its appropriations in accordance with the provisions of the National Historic Preservation Act of 1966, as amended (16 U.S.C. 470 et seq.) (NHPA).

The ACHP offers amendments to its authorities that we believe will strengthen our ability to meet our responsibilities under NHPA, and to provide leadership and coordination in the Federal historic preservation program. As part of that responsibility, and as requested by the Subcommittee, the ACHP also provides its views on the adequacy of protections for private property owners in the process of evaluating properties for inclusion in the National Register of Historic Places.

BACKGROUND

The ACHP was established by Title II of the NHPA. NHPA charges the ACHP with advising the President and the Congress on historic preservation matters and entrusts the ACHP with the unique mission of advancing historic preservation within the Federal Government and the National Historic Preservation Program. In FY 2002, the ACHP adopted the following mission statement:

The Advisory Council on Historic Preservation promotes the preservation, enhancement, and productive use of our Nation's historic resources, and advises the President and Congress on national historic preservation policy.

The ACHP's authority and responsibilities are principally derived from NHPA. General duties of the ACHP are detailed in Section 202 (16 U.S.C. 470j) and include:

- advising the President and Congress on matters relating to historic preservation;
- encouraging public interest and participation in historic preservation;
- recommending policy and tax studies as they affect historic preservation;
- advising State and local governments on historic preservation legislation;
- encouraging training and education in historic preservation;
- reviewing Federal policies and programs and recommending improvements; and
- informing and educating others about the ACHP's activities.

Under Section 106 of NHPA (*16 U.S.C. 470f*), the ACHP reviews Federal actions affecting historic properties to ensure that historic preservation needs are considered and balanced with Federal project requirements. It achieves this balance through the "Section 106 review process," which applies whenever a Federal action has the potential to impact historic properties. As administered by the ACHP, the process guarantees that State and local governments, Indian tribes, businesses and organizations, and private citizens will have an effective opportunity to participate in Federal project planning when historic properties they value may be affected.

Under Section 211 of NHPA (*16 U.S.C. 470s*) the ACHP is granted rulemaking authority for Section 106. The ACHP also has consultative and other responsibilities under Sections 101, 110, 111, 203, and 214 of NHPA, and in accordance with the National Environmental Policy Act (*42 U.S.C. 4321 et seq.*) is considered an agency with "special expertise" to comment on environmental impacts involving historic properties and other cultural resources.

The ACHP plays a pivotal role in the National Historic Preservation Program. Founded as a unique partnership among Federal, State, and local governments, Indian tribes, and the public to advance the preservation of America's heritage while recognizing contemporary needs, the partnership has matured and expanded over time. The Secretary of the Interior and the ACHP have distinct but complementary responsibilities for managing the National Historic Preservation Program. The Secretary, acting through the Director of the National Park Service, maintains the national inventory of historic properties, sets standards for historic preservation, administers financial assistance and programs for tribal, State, and local participation, and provides technical preservation assistance.

The ACHP also plays a key role in shaping historic preservation policy and programs at the highest levels of the Administration. It coordinates the national program, assisting Federal agencies in meeting their preservation responsibilities. Through its administration of Section 106, the ACHP works with Federal agencies, States, tribes, local governments, applicants for Federal assistance, and other affected parties to ensure that their interests are considered in the process. It helps parties reach agreement on measures to avoid or resolve conflicts that may arise between development needs and preservation objectives, including mitigation of harmful impacts.

The ACHP is uniquely suited to its task. As an independent agency, it brings together through its membership Federal agency heads, representatives of State and local governments, historic preservation leaders and experts, Native American representatives, and private citizens to shape national policies and programs dealing with historic preservation. The ACHP's diverse membership is reflected in its efforts to seek sensible, cost-effective ways to mesh preservation goals with other public needs. Unlike other Federal agencies or private preservation organizations, the ACHP incorporates a variety of interests and viewpoints in fulfilling its statutory duties, broadly reflecting the public interest. Recommended solutions are reached that reflect both the impacts on irreplaceable historic properties and the needs of today's society.

New Directions. Since assuming the Chairmanship in November 2001, I have tried to ensure that the ACHP takes the leadership role envisioned for it in NHPA. NHPA established a national policy 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.” Among other things, the statute directed Federal agencies to foster conditions that help attain the national goal of historic preservation; to act as faithful stewards of federally owned, administered, or controlled historic resources for present and future generations; and to offer maximum encouragement and assistance to other public and private preservation efforts through a variety of means.

In creating the ACHP, Congress recognized the value of having an independent entity to provide advice, coordination, and oversight of NHPA’s implementation by Federal agencies. The ACHP remains the only Federal entity created solely to address historic preservation issues, and helps to bridge differences in this area among Federal agencies, and between the Federal Government and States, Indian tribes, local governments, and citizens. While the administration of the historic preservation review process established by Section 106 of NHPA is very important and a significant ACHP responsibility, we believe that the ACHP’s mission is broader than simply managing that process.

With the new direction, the ACHP members are committed to promoting the preservation and appreciation of historic properties across the Nation by undertaking new initiatives that include:

- developing an Executive order (Executive Order 13287, “Preserve America,” signed by the President March 3, 2003) to promote the benefits of preservation, to improve Federal stewardship of historic properties, and to foster recognition of such properties as national assets to be used for economic, educational, and other purposes;
- creating an initiative for the White House (“Preserve America,” announced by First Lady Laura Bush March 3, 2003) to stimulate creative partnerships among all levels of government and the private sector to preserve and actively use historic resources to stimulate a better appreciation of America’s history and diversity;
- using Council meetings to learn from local government and citizens how the Federal Government can effectively participate in local heritage tourism initiatives and promote these strategies to Federal agencies and tourism professionals;
- effectively communicating its mission and activities to its stakeholders as well as the general public;
- pursuing partnerships with Federal agencies to streamline and increase the effectiveness of the Federal historic preservation review process; and
- improving the Native American program, which the ACHP has identified as a critical element in the implementation of an effective Federal historic preservation program and review process.

The ACHP’s 20 statutorily designated members address policy issues, direct program initiatives, and make recommendations regarding historic preservation to the President, Congress, and heads of other Federal agencies. The Council members meet four times per year to conduct business, holding two meetings in Washington, D.C., and two in other communities where relevant preservation issues can be explored.

In 2002 we reorganized the ACHP membership and staff to expand the members’ role and to enhance work efficiencies as well as member-staff interaction. To best use the talents and energy of the 20 Council members and ensure that they fully participate in advancing the ACHP’s goals and programs, three member program committees were created: Federal Agency Programs; Preservation Initiatives; and Communications, Education, and Outreach.

In addition, we created an Executive Committee comprised of myself and the vice chairman of the ACHP and the chairman of each of the other committees to assist in the governance of the ACHP. Several times a year, we appoint panels of members to formulate comments on Section 106 cases. Member task forces and committees are also formed to pursue specific tasks, such as policy development or regulatory reform oversight. On average, three such subgroups are at work at any given time during the year. Each meets about five to six times in the course of its existence, is served by one to three staff members, and produces reports, comments, and policy recommendations.

The staff carries out the day-to-day work of the ACHP and provides all support services for Council members. To reflect and support the work of the committees, the Executive Director reorganized the ACHP staff into three program offices to mirror the committee structure. Staff components are under the supervision of the Executive Director, who is based in the Washington, DC, office; there is also a small field office in Lakewood, Colorado.

PROPOSED AMENDMENTS TO THE NATIONAL HISTORIC PRESERVATION ACT

Background to Reauthorization. The ACHP has traditionally had its appropriations authorized on a multi-year cycle in Title II of NHPA (Section 212, *16 U.S.C. 470i*). The current cycle runs through FY 2005 and authorizes \$4 million annually. These funds are provided to support the programs and operations of the ACHP. Title II of NHPA also sets forth the general authorities and structure of the ACHP.

For FY 2004, the President's budget seeks \$4.1 million for the ACHP. Because this is over the authorization limit, the Executive Office of the President directed the ACHP to propose any legislation required to modify its authorization to be consistent with the President's Budget. The ACHP is therefore seeking amendments to the authorizing legislation at this time. At its February and May 2003 meetings, the ACHP endorsed an approach to the reauthorization issue. The approach addresses the immediate appropriations authority issue and also seeks amendments to the ACHP's composition and authorities to better enable the ACHP to achieve its mission goals. The changes proposed by the ACHP are explained in this overview; specific statutory language will be provided to the Subcommittee at a later date.

Appropriations Authorization. This section would amend the current time-limited authorization and replace it with a permanent appropriations authorization. When the ACHP was created in 1966, its functions were exclusively advisory and limited and the agency was lodged administratively in the Department of the Interior. Since then, the Congress has amended the NHPA to establish the ACHP as an independent Federal agency and give it a range of program authorities crucial to the success of the National Historic Preservation Program.

Not unlike the Commission of Fine Arts (CFA) and the National Capital Planning Commission (NCPC), the ACHP now functions as a small but important Federal agency, carrying out both advisory and substantive program duties. Specific language creating a permanent appropriations authorization would draw upon the similar statutory authorities of the CFA and NCPC. No ceiling to the annual appropriations authorization would be included in the authorizing legislation, but rather the appropriate funding limits would be established through the annual appropriations process.

Expansion of Membership. This section would expand the membership of the ACHP by directing the President to designate the heads of three additional Federal agencies as members of the ACHP. The ACHP has been aggressively pursuing partnerships with Federal agencies in recent years and has found the results to be greatly beneficial to meeting both Federal agency historic preservation responsibilities

and the ACHP's own mission goals. Experience has shown that these partnerships are fostered and enhanced by having the agency participate as a full-fledged member of the ACHP, giving it both a voice and a stake in the ACHP's actions. The amendment would bring the total number of Federal ACHP members to nine and expand the ACHP membership to 23, an administratively manageable number that preserves the current majority of non-Federal members. A technical amendment to adjust quorum requirements would also be included.

Authority and Direction to Improve Coordination with Federal Funding Agencies. This section would give the ACHP the authority and direction to work cooperatively with Federal funding agencies to assist them in determining appropriate uses of their existing grants programs for advancing the purposes of NHPA. For example, it is our experience that programs such as the Historic Preservation Fund (HPF) administered through the States by the Department of the Interior have the flexibility to provide matching seed money to a local non-profit organization to support a heritage tourism program.

The ACHP would work with agencies and grant recipients to examine the effectiveness of existing grant programs, evaluate the adequacy of funding levels, and help the agencies determine whether changes in the programs would better meet preservation and other needs. Any recommendations would be developed in close cooperation with the Federal funding agencies themselves, many of whom sit as ACHP members, and with the States. The proposed amendment would also allow the ACHP to work cooperatively with Federal funding agencies in the administration of their grant programs.

Technical Amendments. This section would provide four technical changes that would improve ACHP operations:

1. Authorize the Governor, who is a presidentially appointed member of the ACHP, to designate a voting representative to participate in the ACHP activities in the Governor's absence. Currently this authority is extended to Federal agencies and other organizational members. The amendment would recognize that the personal participation of a Governor cannot always be assumed, much like that of a Cabinet secretary.
2. Authorize the ACHP to engage administrative support services from sources other than the Department of the Interior. The current law requires the ACHP's administrative services to be provided by the Department of the Interior on a reimbursable basis. The amendment would authorize the ACHP to obtain any or all of those services from other Federal agencies or the private sector. The amendment would further the goals of the FAIR Act and improve ACHP efficiency by allowing the ACHP to obtain necessary services on the most beneficial terms.
3. Clarify that the ACHP's donation authority (16 U.S.C. 470m(g)) includes the ability of the ACHP to actively solicit such donations.
4. Adjust the quorum requirements to accommodate expanded ACHP membership.

VIEWS ON THE ADEQUACY OF PRIVATE PROPERTY PROTECTIONS IN THE NATIONAL REGISTER PROCESS

The Committee has requested our views on the adequacy of protections for private property owners during the process for evaluating and registering properties for inclusion in the National Register of Historic Places.

The National Register is the keystone of the National Historic Preservation Program. Through the professional application of objective criteria, a comprehensive listing of what is truly important in American history has been systematically compiled. The ACHP has direct experience with the National

Register review and evaluation process through its administration of Section 106 of NHPA. As part of planning, unless properties are already listed in the National Register of Historic Places, determinations of eligibility for inclusion in the National Register must be made when such properties may be impacted by Federal or federally assisted actions.

We are unaware of problems with the protection of the rights of private property owners in the Section 106 process, since the determination is made for planning purposes only and for consideration by Federal agencies in taking into account the effects of their actions.

We do believe it is important to distinguish between actual listing in the National Register, which may result in tax and other benefits and legally must include opportunities for property owners to object to such listing, and determinations of eligibility which are used for Federal planning. It is our understanding that in rare instances, some States' legislation and some local ordinances include "eligibility for inclusion in the National Register" to trigger the State or local review process. It is our opinion that determinations of eligibility should not by themselves automatically trigger or link to a State or local review process without due process and additional protections of private property owners' rights. It is also our understanding that State Historic Preservation Offices, such as Texas, are generally discouraging eligibility from being included in State laws and local ordinances to ensure adequate private property protections.

States have varying approaches to dealing with the overall issue of notification and objection. Public notices, hearings, and other mechanisms are used when large historic districts are being considered. In the case of smaller districts or individual properties, written notification is provided. In Texas, notifications are sent out to the property owner, the county judge, the chief elected official, and the local preservation board chair of pending listings in the National Register with an opportunity for making their views known. In New York, if an objection to a nomination is received from an owner, that nomination does not proceed. An official representative from the New York State Historic Preservation Office will speak with the property owner and explain the effects of listing in the National Register. In many instances, owners will withdraw their objections once they understand the implication of such listing.

In summary, we think that as a function of Federal law and Federal administrative practice there are generally adequate protections for the rights of private property owners in the National Register process.

CONCLUSION

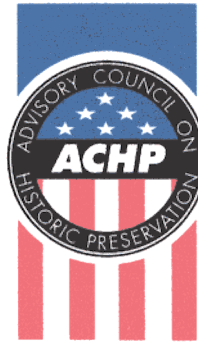
The ACHP has reached a level of maturity as an independent Federal agency and as a key partner in the National Historic Preservation Program to warrant continued support from the Congress. We believe that reauthorization, coupled with periodic oversight by this Subcommittee and the annual review provided by the Appropriations Committees, is fully justified by our record of accomplishment. We hope that the Subcommittee will favorably consider this request, including our recommended technical amendments.

We appreciate the Subcommittee's interest in these issues, and thank you for your consideration and the opportunity to present our views.

John L. Nau, III
Chairman

Bernadette Castro
Vice Chairman

John M. Fowler
Executive Director



Preserving America's Heritage

John L. Nau, III
Chairman
Advisory Council on Historic Preservation

In August 2001, John L. Nau, III, was appointed by President George W. Bush to a four-year term as Chairman of the Advisory Council on Historic Preservation. He also serves as the Chairman of the Texas Historical Commission, a position appointed by the Governor of Texas that he has held since 1995.

Nau's commitment to service is apparent through a broad spectrum of participation in civic, community, and philanthropic organizations in Houston and throughout the country. His involvement includes board of director of the Greater Houston Partnership; board of trustee of Baylor College of Medicine; vice chairman of the Board of Directors of the Civil War Preservation Trust; charter member of the Monticello Cabinet-Charlottesville, Virginia; participant in the President's Transportation Infrastructure Streamlining Task Force; Jamestown 400th Commemoration Commission; Texas State History Museum Advisory Committee; and Greater Houston Preservation Alliance Advisory Board.

He is president and chief executive officer of Silver Eagle Distributors, L.P., one of the Nation's largest distributors of Anheuser-Busch products and the leading beer distributor in the Houston area.

Nau is a 1968 graduate of the University of Virginia, where he earned a Bachelor of Arts in history. Currently, he serves as president of the College Foundation of the University, and most recently served as chairman of the College of Arts and Sciences Campaign. He has also served on the board of managers of the Alumni Association.

He and his wife, Bobbie, reside in Houston. They have two daughters, Victoria Nau and Elizabeth Nau Stepanian, and one granddaughter, Katharine King Stepanian.

Nau/ACHP/06-04