

## 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.