

## The Advisory Council on Historic Preservation at 30

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In the fall of 1966, as the United States and other nations worked to save the treasures of ancient Egypt from the rising waters of the Aswan High Dam, President Lyndon B. Johnson acted to help protect America's own historic legacy. He signed Public Law 89-665, "an act to establish a program for the preservation of additional historic properties throughout the nation, and for other purposes." The five-page document that became known as the National Historic Preservation Act (NHPA) not only declared that historic preservation was a legitimate government priority, but also established the basis for federal leadership in the public-private partnership that is the centerpiece of historic preservation in the United States today.

Invoking the depth and diversity of America's unique heritage and its ability to inspire, to educate, and to improve the quality of life, NHPA explicitly recognized the inadequacies of public policy to address the negative results of development and to serve the public interest in preservation up to that point. It affirmed the significance of the physical remnants of the past and set forth a series of provisions designed to preserve, protect, and maintain the nation's "historic and cultural foundations" in a "spirit of stewardship for present and future generations."

### *The Council's Initial Charge*

*With Heritage So Rich*, the 1965 report by the U.S. Conference of Mayors that resulted in passage of NHPA, called for "an adequately staffed Advisory Council on Historic Preservation, with membership representing the major [F]ederal departments and agencies involved in preservation matters, as well as [S]tate and local governments and public and private organizations interested in historic preservation and urban development."<sup>1</sup> Among that Council's principal duties would be "advising the President and Congress on historic preservation as it affects the national welfare and providing inspiration and leadership for the implementation of the national policy," in addition to developing "policies, guidelines, and studies for the review and resolution of conflicts between different [F]ederal and federally-aided programs affecting historic preservation."<sup>2</sup>

As organized under the new law, the Council was roughly divided between public and private

members, with personnel and budget authority provided by and through the Director of the National Park Service. This structure presented some obvious problems: staff, for one, could not act independently at the direction of the Council and its chairman. Moreover, the Council's budget was submitted as a part of the Park Service's budget. Given its limited staff and budget—two FTE positions and \$105,000, respectively by 1971—the Council focused its early efforts on getting major portions of the national preservation program up and running, as well as hearing and rendering formal comments on historic preservation cases referred to it by federal departments. Originally the law applied only to federal actions affecting properties that had been listed in the National Register of Historic Places. Later it embraced not only listed properties, but properties that met the criteria whether or not they had been formally registered.

In the first three years of its existence, the Council heard and formally commented on seven cases; by the end of 1977, some 4,000 cases had been reviewed either formally or informally by the Council and its staff, and 33 resulted in formal comments issued by the full Council. Early case precedents established by the full Council provided the basis for such principles as public consultation and the consideration of project alternatives; analysis of indirect as well as direct effects on historic properties; the importance of design review within historic districts; the value of comprehensive approaches to resource planning and management on public lands; and the role of consultation with concerned citizens and groups to address and protect the varied public values associated with historic properties.

At the same time, the Council issued guidelines for state legislation, suggested ways to take advantage of existing federal programs to meet such preservation goals as neighborhood conservation and urban revitalization, and prepared educational materials to inform the public of the new directions in government policy. Not until 1976, following some highly publicized cases that raised questions about possible conflicts of interest between Council objectivity and necessary review of development proposals in and around the national parks, did Congress make the Council

independent from the Department of the Interior and given a separate staff and budget.

*Providing Leadership through Policy Formulation and Advice*

NHPA established a national policy to promote the living use of historic properties to meet the contemporary needs of society and directed the federal government, acting in partnership with state and local governments and the private sector, to take a leadership role in carrying it out. The Council has provided a forum for examining and debating major policy issues, heard testimony and discussed issues at its regular public meetings held around the country, and through special working panels, has helped oversee, prepare, and disseminate numerous special studies and guidance materials designed to promote the more effective protection, enhancement, and use of historic properties.

The list of topics receiving Council attention from 1966-1996 serves as a virtual index to the national historic preservation agenda as well as the social and economic issues of the day. Increased apprehension about the economy—particularly the energy crisis—and the implications of new energy development for the nation's historic resources that colored the mid- to late-1970s prompted the Council to take an in-depth look at how historic preservation could be used to net substantial energy savings. Problems in dealing with archeological resources and the high costs of conducting archeological work—often as a result of energy production or delivery projects—led to a major effort to produce guidance on the appropriate treatment of archeological resources. The focus on federal tax reform in the early- to mid-1980s led to an assessment of tax law in relation to historic preservation, and recommendations on how the government could make tax incentives more effective in stimulating long-term investments in the historic built landscape. The 1990s, which

have placed high value on recognizing the diversity of the program and the challenges of coping with its complexities, have provided the occasion for several important Council initiatives. To date, the Council has addressed such diverse policy issues as consultation with Native Americans on issues of concern to them; better ways to use historic buildings to meet the needs of affordable housing; strategies for protecting and conserving historic urban centers as well as rural America; the historic preservation challenges posed by continuing use and modification of historic technical and scientific facilities; and federal property management in the local community context.

*Promoting the "Take into Account" Standard for Considering Historic Values*

A linchpin of NHPA was and is Section 106, which links federal action to state, local, and private interests; the 1966 Act charged the Council with its implementation. The Congress had framed federal 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." Section 106 and the concepts underlying it provided the tools to help accomplish this balancing act. Federal agencies were to "take into account" the effects of their undertakings on properties that met criteria established by the Secretary of the Interior for listing in the National Register of Historic Places and provide the Council a reasonable opportunity to comment on such undertakings.

Under the Council's rulemaking authority to implement the law and the resulting government-wide procedures (36 CFR Part 800, "Protection of Historic Properties"), the Section 106 review process requires an agency planning, funding, or licensing a project or program to identify historic properties that might be affected; assess the proposed undertaking's likely impact on such proper-



*Over the years, historic Charleston, SC, has been the setting for some of the Council's most important work. Shown here, Mayor Joseph P. Riley, Jr., updates Council members on Hurricane Hugo recovery efforts. Under agreements among the Council, the South Carolina State Historic Preservation Office, and the Federal Emergency Management Administration, in 1990 the Council reviewed some 200 cases from the greater Charleston area involving hurricane damage repairs and related rehabilitation. Photo courtesy Advisory Council on Historic Preservation.*

With its strong public participation component, the Section 106 review process provides an important forum for citizens to participate in federal decisions affecting historic resources. This 1990 public meeting in Port Townsend, WA, was designed to encourage dialogue between the Advisory Council on Historic Preservation and local residents about how the review process worked in their community. Photo courtesy Advisory Council on Historic Preservation.



ties; consider alternatives to lessen any impact; and consult with non-federal parties to try to reach a solution in the public interest. The goal of the review process is not necessarily historic preservation at any cost but rather an active exchange with affected and concerned parties and a good faith effort to strike a balance between preservation of historic values and other needs.

The hallmark of the Section 106 process is thus dispute resolution through consultation, which typically includes federal agencies, project proponents, State Historic Preservation Officers (SHPOs), and other affected parties, ranging from preservation groups to Indian tribes to private property owners. The Council is often directly involved in these consultations, particularly those with significant public controversy or complicated preservation issues. A partial listing of some of the more prominent and influential cases that have been considered over the years under Section 106 may be found in the accompanying chart.

#### *Section 106 in Microcosm*

The history, promise, and challenge of American historic preservation converge in Charleston, South Carolina. Charleston's heritage, its tradition of citizen activism, and its struggles with progress have provided a rich setting for some of the Council's most important work through Section 106 and the intergovernmental, public-private partnership upon which it depends. The city's Old and Historic District, Fort Sumter

National Monument, other individually-significant National Historic Landmarks, historic naval facilities, locally important properties, and historic archeological resources have all been caught up in the ongoing (and often lively) debate over the place of Charleston's past in its present and future. In this context, Charleston cases of particular note include construction of the James Island Bridge and Expressway and related transportation improvements (1971, modified 1975); construction of an urban hotel and commercial development known as Charleston Place (1979); adaptive use of historic railroad structures for a city visitor reception and transportation center (1988); development of a new tour boat and concessions facility for NPS visitors to Fort Sumter (1988); dealing with the devastating effects of Hurricane Hugo (1989) and post-disaster cleanup, repair, and rebuilding efforts; construction of a storm water drainage system (1991); commercial development within the Cooper River Development Area (1993); and the planned Charleston Naval Base closure (1995).

Charleston's rich and complex history, the density of its historic fabric, and the natural and cultural constraints on its transportation system, infrastructure, neighborhoods, and adjacent communities all combine to present many of the most serious challenges faced by modern historic preservation. Charlestonians struggle to balance tourism and related economic development pressures against a fragile human environment, to maintain their city's small town character while accommodating rapid growth and development, and to provide housing and community services to the full range of citizens. This struggle is exacerbated by the very real threat of natural disaster (hurricanes) or potential economic disaster (military base closure). Beginning with full Council consideration of the James River Bridge 25 years ago, and culminating with the agreement reached last year to take into account the effects associated with the closure and disposition of the Charleston Naval Base, Charleston readily demonstrates how the Council's participation in the ongoing public debate over balancing a community's history with its future can make a difference and serve the public interest.

#### *Recommending Methods to Improve Federal Program Effectiveness*

In addition to its routine involvement in numerous individual cases each year, the Council has since its inception worked cooperatively with federal agencies to improve their stewardship of

historic resources. One important mechanism to achieve this has been the Programmatic Agreement, a creation of the Council's Section 106 procedures that was bolstered considerably by the expansion of federal preservation responsibilities contained in Executive Order 11593 (1971) and amendments to the National Historic Preservation Act in 1980 and 1992. Early agreements were developed to streamline and improve how federal agencies dealt with large and complex projects, such as interstate highways, pipelines, dams, and similar proposals, where the effects on historic properties could not be fully determined prior to project approval. For example, planning and siting studies for the proposed Air Force deployment of the M-X Missile in the western United States, and route studies for the Trans Alaska and Northern Tier crude oil pipelines, proceeded under such agreements. More recently, regional planning studies, area land use plans for national forests and other public lands, statewide or communitywide federal assistance programs, or operations and management at federal military installations and other facilities have been subject to review and consultation on this basis.

In recent years, the Council has committed itself to assisting federal agencies in developing required programs and procedures, offering the expertise it has developed over 30 years of individual Section 106 consultation and problem-solving, to help craft more efficient, less costly, and more publicly-responsive ways for agencies to meet statutory obligations. The Council has worked closely with agencies on policies, standard operating procedures, and management plans to fully integrate historic preservation into daily and routine agency business. In today's economic and political climate, the Council's efforts to help coordinate federal preservation activities and improve federal historic preservation programs may prove to be among its most lasting and tangible contributions to the preservation of the nation's heritage.

#### *Encouraging Public Interest and Participation in Historic Preservation*

Since 1966, NHPA has enabled individuals across the country to experience their heritage in a real and meaningful way, to lay personal claim to their collective past as Americans. Along with the other partners in these programs, the Advisory Council on Historic Preservation has played an integral role in that phenomenon, helping to ensure that historic preservation gets a fair shake in the national public policy and social arena. Through the Section 106 mechanism, the Council has regularly provided a forum in which con-

cerned citizens can express their views and actively participate in federal decisions that affected valued historic resources. Yet there has been more to the Council's work than helping to surface and resolve conflicts. At the same time, through its educational programs, publications, and staff, the Council has offered a broad range of public information and technical assistance to facilitate public interest and involvement in the broader or national historic preservation program. In 1988, in conjunction with the Department of the Interior, and again in 1993, the Council sponsored the President's Historic Preservation Awards and National Historic Preservation Awards. These programs recognized, respectively, the best of privately-funded and federally-assisted preservation achievements.

#### *New Directions*

As the 1990s draw to a close, the Council is working to meet the challenges presented by federal budget constraints and program emphases, while preparing itself and its partners to meet the historic preservation needs of the new millennium. In response to amendments to NHPA passed in 1992, as well as the Clinton Administration's National Performance Review to reinvent and revitalize government, the Council has undertaken a revision of procedures implementing Section 106 with an eye toward simplifying, streamlining, and focusing consultation and review in more effective and efficient ways. More than ever before, the Council is actively seeking partnerships with other federal agencies as well as other non-federal organizations and institutions to address its responsibilities for policy formulation, public program improvement, education, and outreach in new and creative ways. Electronic media and communications systems hold exciting promise for extending capabilities and interaction with preservation partners as well as the interested public. Through these and related initiatives, the Council reaffirms its commitment to stimulating creative solutions that balance historic preservation with other priorities, and to addressing issues of currency and substance that bear directly on the quality, diversity, and character of modern American life.

#### **Notes**

- <sup>1</sup> *With Heritage So Rich*, p. 195.
- <sup>2</sup> *Ibid.*

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## ***Some Prominent Section 106 Cases, 1966-1996***

- Siting of Nuclear Power Plant, Hudson River near Saratoga Battlefield, NY (1968)
- Proposed Vieux-Carre Expressway, New Orleans, LA (1969)
- Adaptive Use of Old Post Office Building, Washington, DC (1970)
- Central Market Area Redevelopment, Newburyport, MA (1972)
- Faneuil Hall Rehabilitation and Quincy Market Development, Boston, MA (1972)
- Siting and Construction of Gettysburg National Battlefield Tower, Gettysburg, PA (1972)
- Construction of Highway H-3, Oahu, HA (1974)
- Warm Springs Dam Construction, Sonoma, CA (1974)
- Proposed James Island Bridge and Expressway, Charleston, SC (1975)
- Transfer of Historic Dutton Hotel, Ft. Hunter-Liggett, Monterey, CA (1976)
- Construction of Tennessee-Tombigbee Waterway, AL and MS (1976)
- Planning for Interstate 83 Downtown Extension, Baltimore, MD (1977)
- Demolition of Lockefield Gardens Public Housing, Indianapolis, IN (1977)
- Tellico Dam and Lake, Tellico and Tennessee Rivers, TN (1977)
- Demolition of Isherwood Hall, U.S. Naval Academy, Annapolis, MD (1978)
- Construction for New Melones Dam and Reservoir, Sierra Nevada, CA (1978)
- Development of Mixed-Use Project, Charleston Place, Charleston, SC (1979)
- South Street Seaport Redevelopment, New York, NY (1981)
- Planning and Construction of Northern Tier Pipeline, Minnesota to Washington State (1981)
- Siting of M-X Missile System, Western U.S. (1981)
- Replacement of the Walnut Street Bridge, Chattanooga, TN (1981)
- Construction of Gasquet-Orleans (G-O) Road, Six Rivers National Forest, CA (1982)
- Completion of I-10, Papago Inner Loop Freeway, Phoenix, AZ (1982)
- Times Square Area Redevelopment and Morosco Theater Demolition, New York, NY (1982)
- Expansion of McKinley Coal Mine, near Gallup, NM (1982)
- Removal of Apollo Launch Umbilical Tower, Kennedy Space Center, FL (1983)
- Construction of Presidential Parkway and Access to Carter Library, Atlanta, GA (1984)
- Completion of Long Beach Freeway, Pasadena, CA (1985)
- Visitor Center Design and Construction, Arlington National Cemetery, VA (1986)
- Planning for Route 101 Bypass, Dublin-Harrisville, NH (1987)
- Wastewater Treatment Plant on Rio Grande, Corrales North Subdivision, Albuquerque, NM (1987)
- Sale of Shelburne Parish Glebe, Loudoun County, VA (1987)
- Irrigation Diversion and Management, Stillwater Wildlife Management Area, NV (1988)
- Operation and Management of U.S. Military Academy, West Point, NY (1988)
- Construction of All-American/ Celeron Pipeline, TX and NM (1988)
- Exxon Valdez Oil Spill Cleanup, AK (1989)
- Modification of Mission Control, Johnson Space Center, Houston, TX (1989)
- Design and Construction of the Holocaust Memorial Museum, Washington, DC (1989)
- Hurricane Hugo and Loma Prieta Earthquake Disaster Assistance, S.E. U.S. and CA (1989)
- Rehabilitation and Adaptive Use of The Beehive, Fort Leavenworth, KS (1990)
- Closure, Transfer, and Redevelopment of The Presidio, San Francisco, CA (1990- )
- Adaptive Use of Old Custom House, New York, NY (1991)
- Proposed Widening and Upgrade of Paris Pike (US 27/68), KY (1991)
- Construction of Dallas Area Rapid Transit System (Kennedy Assassination Site), Dallas, TX (1991)
- Downgrading and Rehabilitation of Main Post Office, Easton, PA (1991)
- Construction of Federal Prison, Miami, FL (1991)
- Siting and Construction of Gaming Parlor, Hickory Ground, AL (1991)
- Federal Office Building Construction (African Burial Ground), Foley Square, New York, NY (1992)
- Fence Lake Coal Mine Development, NM (1993)
- Federal Office Building Construction, Atlanta, GA (1993)

Washington Dulles International Airport Terminal Expansion (1993)  
Hurricane Iniki Disaster Assistance, Kauai, HA (1993)  
Homan Square Housing Project Development, Chicago, IL (1993)  
Grand Central Terminal Rehabilitation, New York, NY (1993)  
Flood Disaster Assistance, Midwest and Southeast U.S. (1994)  
Management of and Access to the Medicine Wheel, Bighorn National Forest, WY (1994)

Northridge Earthquake Disaster Assistance, Los Angeles area, CA (1994)  
Glen Canyon Water Release Program, AZ (1994)  
Commercial Development/Proposed Racetrack, Brandy Station Battlefield, Culpeper County, VA (1995)  
Demolition of Techwood Homes Public Housing, Atlanta, GA (1996)  
Governors Island Coast Guard Base Closure and Disposal, New York, NY (1996)

## *Special Studies and Policy Guidance, Advisory Council on Historic Preservation 1966-1996*

Guidelines for State Historic Preservation Legislation (1972)  
Federal-State Cooperative Efforts in Historic Preservation (1975)  
Federal Programs for Neighborhood Conservation (1975)  
The National Historic Preservation Program Today (1976)  
Survey of Local Preservation Programs (1976)  
Adaptive Use: A Survey of Construction Costs (1976)  
Federal Assistance for Maritime Preservation (1976)  
Issues in Archaeology (1977)  
Gettysburg Area Preservation Plan (1977)  
Preservation Litigation Sourcebook (1978)  
Preservation and Urban Revitalization (1979)  
Preservation and Energy Conservation (1979)  
Protection of Natural and Historic Landmarks from Surface Mining Activity (1979)  
Historic Resources Available for Public Buildings Use in 29 Southeastern Cities (1980)  
Handbook on Treatment of Archeological Properties (1980)  
Termination of U.S. Trusteeship in Micronesia (1981)  
Neighborhood Conservation (1981)  
Where to Look: Guide to Preservation Information and Resources (1982)  
Federal Taxation and the Preservation of America's Heritage (1983)  
Federal Historic Preservation Case Law (1985)

Twenty Years of the National Historic Preservation Act (1986)  
The National Historic Preservation Act: An Assessment of Its Implementation (1986)  
President's and National Historic Preservation Awards (Round I) (1988)  
Conservation of Historic Towns and Cities (1989)  
Historic Resource Management Plan, U.S. Military Academy, West Point (1989)  
Preserving America's Rural Heritage (1990)  
Disaster Management and Historic Preservation (1990)  
Balancing Historic Preservation with the Needs of Highly Technical or Scientific Facilities (1991)  
Federal Property Management and Historic Preservation in the Local Community I (1991)  
Federal Property Management and Historic Preservation in the Local Community II (1992)  
Consultation with Native Americans Concerning Properties of Traditional Cultural and Religious Importance (1993)  
President's and National Historic Preservation Awards (Round II) (1993)  
Defense Department Compliance with the National Historic Preservation Act (1994)  
Affordable Housing and Historic Preservation (1995)