

National Park Service, Interior

§ 73.3

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San Bernardino Co., California
San Diego Co., California
San Joaquin Co., California
Shelby Co., Tennessee
Sonoma Co., California
Suffolk Co., New York
Wayne Co., Michigan
Worcester Co., Massachusetts

[44 FR 58091, Oct. 9, 1979. Redesignated at 46 FR 34329, July 1, 1981, and correctly redesignated at 46 FR 43045, Aug. 26, 1981, and amended at 47 FR 15137, Apr. 8, 1982]

PART 73—WORLD HERITAGE CONVENTION

Sec.

- 73.1 Purpose.
- 73.3 Definitions.
- 73.5 Authority.
- 73.7 World Heritage Nomination process.
- 73.9 World Heritage criteria.
- 73.11 Federal Interagency Panel for World Heritage.
- 73.13 Protection of U.S. World Heritage properties.
- 73.15 International World Heritage activities.
- 73.17 Public information and education activities.

AUTHORITY: 94 Stat. 3000; 16 U.S.C. 470 a-1, a-2, d.

SOURCE: 47 FR 23397, May 27, 1982, unless otherwise noted.

§ 73.1 Purpose.

The purpose of these rules is to set forth the policies and procedures that the Department of the Interior, through the National Park Service (NPS), uses to direct and coordinate U.S. participation in the Convention Concerning the Protection of the World Cultural and Natural Heritage, which was ratified by the Senate on October 26, 1973. The rules describe the procedures used to implement the Convention under the National Historic Preservation Act Amendments of 1980. The purpose of the World Heritage Convention is to enhance worldwide understanding and appreciation of heritage conservation, and to recognize and preserve natural and cultural properties throughout the world that have outstanding universal value to mankind.

§ 73.3 Definitions.

Cultural Heritage—Article 1 of the Convention defines “Cultural Heritage” as:

Monuments: architectural works, works of monumental sculpture and painting, elements or structures of an archaeological nature, inscriptions, cave dwellings, and combinations of features, which are of outstanding universal value from the point of view of history, art, or science;

Groups of buildings: groups of separate or connected buildings which, because of their architecture, their homogeneity or their place in the landscape, are of outstanding universal value from the point of view of history, art, or science; and

Sites: works of man or the combined works of nature and of man, and areas including archaeological sites which are of outstanding universal value from the historical, aesthetic, ethnological, or anthropological points of view.

Natural Heritage—Article 2 of the Convention defines “Natural Heritage” as:

Natural features, consisting of physical and biological formations or groups of such formations, which are of outstanding universal value from the aesthetic or scientific point of view;

Geological and physiographical formations and precisely delineated areas which constitute the habitat of threatened species of animals and plants of outstanding universal value from the point of view of science or conservation; and

Natural sites or precisely delineated natural areas of outstanding universal value from the point of view of science, conservation, or natural beauty.

Intergovernmental Committee for the Protection of the World Cultural and Natural Heritage, or *World Heritage Committee*, means the Committee established by Article 8 of the Convention and assisted by the United Nations Educational, Scientific and Cultural Organization (UNESCO). It is composed of 21 nations participating in the Convention, and is responsible for implementing the Convention at the international level. Countries represented on the Committee are elected by participating nations and serve for three sessions of the UNESCO General Conference (six years). The Committee establishes criteria which properties must satisfy for inclusion on the World

§ 73.5

Heritage List, sets policy and procedures, and approves properties for inclusion on the World Heritage List.

World Heritage Convention, or *Convention*, means the Convention Concerning the Protection of the World Cultural and Natural Heritage, ratified by the U.S. Senate on October 26, 1973.

World Heritage List, means the List established by Article 11 of the Convention which includes those cultural and natural properties judged to possess outstanding universal value for mankind.

UNESCO, means the United Nations Educational, Scientific and Cultural Organization, which provides staff support for the Convention and its implementation.

Assistant Secretary, means the Assistant Secretary for Fish and Wildlife and Parks, U.S. Department of the Interior, or the designee authorized to carry out the Assistant Secretary's responsibilities.

Department, means the U.S. Department of the Interior.

Federal Interagency Panel for World Heritage, or *Panel*, means the Panel consisting of representatives from the Office of the Assistant Secretary, the National Park Service, and the U.S. Fish and Wildlife Service within the Department of the Interior; the President's Council on Environmental Quality; the Smithsonian Institution; the Advisory Council on Historic Preservation; the Department of Commerce; and the Department of State.

Owner, means the individual(s) or organization(s) of record that own private land that is being nominated for World Heritage status, or the head of the public agency, or subordinate to whom such authority has been delegated, responsible for administering public land that is being nominated for World Heritage status.

Owner concurrence, means the concurrence of all owners of any property interest that is part of the World Heritage nomination.

[47 FR 23397, May 27, 1982, as amended at 62 FR 30235, June 3, 1997]

§ 73.5 Authority.

The policies and procedures contained herein are based on the authority of the Secretary of the Interior

36 CFR Ch. I (7-1-12 Edition)

under title IV of the National Historic Preservation Act Amendments of 1980 (Pub. L. 96-515; 94 Stat. 3000; 16 U.S.C. 470a-1, a-2) which directs the Secretary to ensure and direct U.S. participation in the Convention Concerning the Protection of the World Cultural and Natural Heritage, approved by the U.S. Senate on October 26, 1973, in cooperation with the Secretary of State, the Smithsonian Institution, and the Advisory Council on Historic Preservation.

§ 73.7 World Heritage nomination process.

(a) *What is the U.S. World Heritage nomination process?* (1) The Assistant Secretary for Fish and Wildlife and Parks ("Assistant Secretary") is the designated official who conducts the United States World Heritage Program and periodically nominates properties to the World Heritage List on behalf of the United States. The National Park Service (NPS) provides staff support to the Assistant Secretary.

(2) The Assistant Secretary initiates the process for identifying candidate properties for the World Heritage List and subsequently preparing, evaluating, and approving U.S. nominations for them by publishing a First Notice in the FEDERAL REGISTER. This notice includes a list of candidate sites (formally known as the Indicative Inventory of Potential Future U.S. World Heritage nominations) and requests that public and private sources recommend properties for nomination.

(3) The Assistant Secretary, with advice from the Federal Interagency Panel for World Heritage ("Panel"), may propose for possible nomination a limited number of properties from the Indicative Inventory.

(4) Property owners, in cooperation with NPS, voluntarily prepare a detailed nomination document for their property that has been proposed for nomination. The Panel reviews the accuracy and completeness of draft nominations, and makes recommendations on them to the Assistant Secretary.

(5) The Assistant Secretary decides whether to nominate any of the proposed properties and transmits approved United States nominations, through the Department of State, to the World Heritage Committee to be

considered for addition to the World Heritage List.

(b) *What requirements must a U.S. property meet to be considered for nomination to the World Heritage List?* A property in the United States must satisfy the following requirements established by law and one or more of the World Heritage Criteria before the Assistant Secretary can consider it for World Heritage nomination:

(1) The property must be nationally significant. For the purposes of this section, a property qualifies as “nationally significant” if it is:

(i) A property that the Secretary of the Interior has designated as a National Historic Landmark (36 CFR part 65) or a National Natural Landmark (36 CFR part 62) under provisions of the 1935 Historic Sites Act (Public Law 74-292; 49 Stat. 666; 16 U.S.C. 461 *et seq.*);

(ii) An area the United States Congress has established as nationally significant; or

(iii) An area the President has proclaimed as a National Monument under the Antiquities Act of 1906 (16 U.S.C. 433).

(2) The property’s owner(s) must concur in writing to the nomination.

(i) If a unit of United States government (Federal, State, and/or local) owns or controls the property, a letter from the owner(s) demonstrates concurrence.

(ii) If private parties own or control the property, they must provide the protection agreement outlined in § 73.13(c).

(iii) All owners must concur before the Assistant Secretary can include their property within a World Heritage nomination. For example, a responsible Federal management official can concur for the unit, but cannot concur for any non-Federal property interest within the boundaries of the unit. NPS will seek the concurrence of those who own or control any non-Federal property interest if we determine that the property interest is integral to the entire property’s outstanding universal values.

(3) The nomination document must include evidence of such legal protections as may be necessary to ensure the preservation of the property and its environment. Section 73.13 identifies

the distinct protection requirements for public and private properties.

(c) *How does the U.S. World Heritage nomination process begin?* The Assistant Secretary, through the NPS, will periodically publish a First Notice in the FEDERAL REGISTER to begin the U.S. World Heritage nomination process. This notice, among other things:

(1) Sets forth the schedule and procedures for identifying proposed U.S. nominations to the World Heritage List. It includes specific deadlines for receipt of suggestions and comments, and for preparing and approving nomination documents for properties proposed as U.S. nominations;

(2) Includes the Indicative Inventory of Potential Future U.S. World Heritage Nominations (Indicative Inventory), solicits recommendations on which properties on it should be nominated, and requests suggestions of properties that should be considered for addition to it; and

(3) Identifies any special requirements that properties must satisfy to be considered for nomination.

(d) *What is the Indicative Inventory and how is it used?* (1) The World Heritage Convention (Article 11) requests each signatory nation to submit a list of candidate sites for the World Heritage List. These lists are also known as tentative lists, or Indicative Inventories. The NPS compiles and maintains the U.S. Indicative Inventory, which is formally known as the Indicative Inventory of Potential Future U.S. World Heritage Nominations. It is a list of cultural and natural properties located in the United States that, based on preliminary examination, appear to qualify for the World Heritage List and that the United States may consider for nomination to the List.

(2) Inclusion of a property on the Indicative Inventory does not confer World Heritage status on it, but merely indicates that the Assistant Secretary may further examine the property for possible nomination. The Assistant Secretary selects proposed nominations from among the potential future nominations included on the Indicative Inventory. Thus, the Assistant Secretary uses the Indicative Inventory as the basis for selecting United States

nominations, and it provides a comparative framework within which to judge the outstanding universal value of a property. Any agency, organization, or individual may recommend additional properties, with accompanying documentation, for inclusion on the Indicative Inventory. Ordinarily, a property must have been listed on the Indicative Inventory before the Assistant Secretary can consider it for nomination.

(3) The Assistant Secretary, in cooperation with the Panel and other sources as appropriate, decides whether to include a recommended property on the Indicative Inventory. If a property is included, NPS will list it the next time we publish the Indicative Inventory in the FEDERAL REGISTER. The Assistant Secretary periodically transmits a copy of the Indicative Inventory, including documentation on each property's location and significance, to the World Heritage Committee for use in evaluation of nominations.

(e) *How are U.S. World Heritage nominations proposed?* (1) After the First Notice's comment period expires, NPS compiles all suggestions and comments. The Assistant Secretary then reviews the comments and suggestions and works in cooperation with the Federal Interagency Panel for World Heritage to decide whether to identify any properties as proposed U.S. nominations. In addition to how well the property satisfies the World Heritage criteria (§ 73.9) and the legislative requirements outlined in paragraph (b)(1) of this section, the Assistant Secretary may consider:

(i) How well the particular type of property (i.e., theme or region) is represented on the World Heritage List;

(ii) The balance between cultural and natural properties already on the List and those under consideration;

(iii) Opportunities that the property affords for public visitation, interpretation, and education;

(iv) Potential threats to the property's integrity or its current state of preservation; and

(v) Other relevant factors, including public interest and awareness of the property.

(2) Selection as a proposed nomination indicates that a property appears

to qualify for World Heritage status and that the Assistant Secretary will encourage the preparation of a complete nomination document for the property.

(f) *Who is notified when U.S. World Heritage nominations are proposed?* (1) The Assistant Secretary for Fish and Wildlife and Parks publishes notice of decisions on proposed U.S. nominations in the FEDERAL REGISTER (Second Notice). If any properties are identified as proposed nominations, the Assistant Secretary also notifies the following parties in writing:

(i) The owner(s) of lands or interests of land that are to be included in the nomination; and

(ii) The House Resources Committee and the Senate Energy and Natural Resources Committee.

(2) The Second Notice advises the recipients of the proposed action, references these rules, and sets forth the process for preparing a nomination. NPS also prepares and issues a press release on the proposed nomination.

(g) *How is a U.S. World Heritage Nomination prepared?* NPS coordinates arrangements for the preparation of a complete nomination document for each proposed property. If you are a property owner(s), you, in cooperation with NPS, are responsible for preparing the draft nomination and for gathering documentation in support of it. NPS oversees the preparation of the nomination and ensures that it follows the procedures contained in these rules and the format and procedural guidelines established by the World Heritage Committee. Each nomination is prepared according to the schedule set forth in the First Notice.

(h) *How is a draft U.S. World Heritage nomination evaluated?* The draft nomination document serves as the basis for the Assistant Secretary's decision to nominate the property to the World Heritage Committee. NPS coordinates the review and evaluation of draft World Heritage nominations. We distribute copies to all members of the Federal Interagency Panel for World Heritage and request comments regarding the significance of the property and the adequacy of the draft nomination.

National Park Service, Interior

§ 73.9

Afterward, we compile the recommendations and comments received from the members of the Panel.

(i) *How is a U.S. World Heritage nomination approved and submitted?* (1) The Assistant Secretary, based on personal evaluation and the recommendations from the Panel, may nominate a property that appears to meet the World Heritage criteria to the World Heritage Committee on behalf of the United States. The Assistant Secretary sends an approved nomination document, through the Department of State, to the World Heritage Committee. The nomination document should be transmitted so that the World Heritage Committee receives it before the deadline established for any given year.

(2) Nomination by the United States does not place a property on the World Heritage List. The World Heritage Committee must consider and approve the nomination, usually at a meeting during the year following its nomination, before it is inscribed as a World Heritage Site.

(j) *Who is notified when a U.S. property has been nominated to the World Heritage List?* (1) Upon approving a nomination, the Assistant Secretary notifies the following parties in writing (Third Notice):

(i) The owner(s) of land or interests in land that are included in the nomination;

(ii) The House Resources Committee; and

(iii) The Senate Energy and Natural Resources Committee.

(2) The Assistant Secretary also publishes notice of the United States World Heritage nomination in the FEDERAL REGISTER. In addition, NPS issues a press release on the nomination.

[66 FR 57880, Nov. 19, 2001]

§ 73.9 World Heritage criteria.

(a) *What are the World Heritage criteria and how are they applied?* The World Heritage Committee uses the following criteria to evaluate cultural and natural properties nominated to the World Heritage List. To qualify for addition to the World Heritage List, sites must meet one or more of the criteria. For information on how to apply the criteria, you should consult their annotated text in the Operational Guide-

lines for the World Heritage Convention. The Operational Guidelines are published periodically by the World Heritage Centre. You may obtain copies of the World Heritage Convention, the Operational Guidelines, and other program information upon request to the Office of International Affairs of the National Park Service, 1849 C Street, NW., Room 2242, Washington, DC 20240. The World Heritage Convention and the Operational Guidelines are also posted on the World Heritage Centre's Web site at www.unesco.org/whc.

(b) *What are the cultural criteria?* The criteria for the inclusion of cultural properties in the World Heritage List should always be seen in relation to one another and should be considered in the context of the definition set out in Article 1 of the Convention. A monument, group of buildings or site—as defined in Article 1 of the Convention—which is nominated for inclusion in the World Heritage List will be considered to be of outstanding universal value for the purpose of the Convention when the Committee finds that it meets one or more of the following criteria and the test of authenticity:

(1) Each property nominated should therefore:

(i) Represent a masterpiece of human creative genius; or

(ii) Exhibit an important interchange of human values, over a span of time or within a cultural area of the world, on developments in architecture or technology, monumental arts, town-planning or landscape design; or

(iii) Bear a unique or at least exceptional testimony to a cultural tradition or to a civilization which is living or which has disappeared; or

(iv) Be an outstanding example of a type of building or architectural or technological ensemble or landscape which illustrates a significant stage(s) in human history; or

(v) Be an outstanding example of a traditional human settlement or land-use which is representative of a culture (or cultures), especially when it has become vulnerable under the impact of irreversible change; or

(vi) Be directly or tangibly associated with events or living traditions, with ideas, or with beliefs, with artistic and literary works of outstanding

universal significance (the Committee considers that this criterion should justify inclusion in the List only in exceptional circumstances and in conjunction with other criteria cultural or natural).

(2) In addition to the criteria in paragraphs (b)(1)(i) through (b)(1)(vi) of this section, the sites should also meet the test of authenticity in design, material, workmanship or setting and in the case of cultural landscapes their distinctive character and components (the Committee stressed that reconstruction is only acceptable if it is carried out on the basis of complete and detailed documentation on the original and to no extent on conjecture) and have adequate legal and/or contractual and/or traditional protection and management mechanisms to ensure the conservation of the nominated cultural properties or cultural landscapes.

(c) *What are the natural criteria?* A natural heritage property—as defined in Article 2 of the Convention—which is submitted for inclusion in the World Heritage List will be considered to be of outstanding universal value for the purposes of the Convention when the Committee finds that it meets one or more of the following criteria specified by the Operational Guidelines and fulfills the conditions of integrity:

(1) Sites nominated should therefore:

(i) Be outstanding examples representing major stages of earth's history, including the record of life, significant on-going geological processes in the development of landforms, or significant geomorphic or physiographic features; or

(ii) Be outstanding examples representing significant on-going ecological and biological processes in the evolution and development of terrestrial, fresh water, coastal and marine ecosystems and communities of plants and animals; or

(iii) Contain superlative natural phenomena or areas of exceptional natural beauty and aesthetic importance; or

(iv) Contain the most important and significant natural habitats for in-situ conservation of biological diversity, including those containing threatened species of outstanding universal value from the point of view of science or conservation.

(2) In addition to the criteria in paragraphs (c)(1)(i) through (c)(1)(iv) of this section, the sites should also fulfill the following conditions of integrity:

(i) The sites described in paragraph (c)(1)(i) of this section should contain all or most of the key interrelated and interdependent elements in their natural relationships.

(ii) The sites described in paragraph (c)(1)(ii) of this section should have sufficient size and contain the necessary elements to demonstrate the key aspects of processes that are essential for the long-term conservation of the ecosystems and the biological diversity they contain.

(iii) The sites described in paragraph (c)(1)(iii) of this section should be of outstanding aesthetic value and include areas that are essential for maintaining the beauty of the site.

(iv) The sites described in paragraph (c)(1)(iv) of this section should contain habitats for maintaining the most diverse fauna and flora characteristic of the biogeographic province and ecosystems under consideration.

(3) The sites should have a management plan. When a site does not have a management plan at the time when it is nominated for the consideration of the World Heritage Committee, the State Party concerned should indicate when such a plan will become available and how it proposes to mobilize the resources required for the preparation and implementation of the plan. The State Party should also provide other document(s) (e.g. operational plans) which will guide the management of the site until such time when a management plan is finalized.

[66 FR 57881, Nov. 19, 2001]

§ 73.11 Federal Interagency Panel for World Heritage.

(a) *Responsibilities.* The Federal Interagency Panel for World Heritage is established to advise the Department of the Interior on implementation of the World Heritage Convention. Among other things, the panel assists in the following activities:

(1) The development of policy and procedures for effectively implementing the Convention in the U.S.;

(2) The evaluation of draft U.S. nomination documents;

National Park Service, Interior

§ 73.13

(3) The making of recommendations for approval of U.S. nominations;

(4) The dissemination of information on the Convention within other Federal agencies; and

(5) The promotion of increased awareness and understanding of the importance of heritage conservation.

(b) *Composition.* (1) The Federal Inter-agency Panel for World Heritage is composed of representatives, named by their respective agencies, from the following agencies and offices:

(i) The Office of the Assistant Secretary for Fish and Wildlife and Parks, U.S. Department of the Interior;

(ii) The National Park Service, U.S. Department of the Interior;

(iii) The U.S. Fish and Wildlife Service, U.S. Department of the Interior;

(iv) The President's Council on Environmental Quality;

(v) The Smithsonian Institution;

(vi) The Advisory Council on Historic Preservation;

(vii) The National Oceanic and Atmospheric Administration, Department of Commerce; and

(viii) The Department of State.

(2) Additional representatives from other Federal agencies with mandates and expertise in heritage conservation may be requested to participate in the Panel from time to time.

(3) The Assistant Secretary, or his/her designee, chairs the Panel, and sets its agenda and schedule. The NPS provides staff support to the Panel.

§ 73.13 Protection of U.S. World Heritage properties.

(a) *Requirements.* (1) Article 5 of the Convention mandates that each participating nation shall take, insofar as possible, the appropriate legal, scientific, technical, administrative, and financial measures necessary for the identification, protection, conservation, preservation, and rehabilitation of properties of outstanding universal value; and

(2) Title IV of Pub. L. 96-515 requires that no non-Federal property may be nominated to the World Heritage List unless its owner concurs in writing to such nomination. The nomination document for each property must include evidence of such legal protections as may be necessary to ensure preserva-

tion of the property and its environment, including, for example, restrictive covenants, easements, and other forms of protection (16 U.S.C. 470a-1).

(b) *Protection Measures for Public Properties.* For properties owned or controlled by Federal, State, and/or local governments, the following items satisfy the protection requirements outlined in paragraph (a) of this section:

(1) Written concurrence by the owner prior to nomination;

(2) The nomination document must include reference to:

(i) All legislation establishing or preserving the area; and

(ii) All existing and proposed administrative measures, including management plans, that would ensure continued satisfactory maintenance of the property and its environment; and

(3) A written statement by the owner(s) that such protection measures satisfy the requirements outlined in (a) above.

(c) *Protection Measures for Private Properties.* For properties owned or controlled by private organizations or individuals, the following items satisfy the protection requirements outlined in (a) of this section.

(1) A written covenant executed by the owner(s) prohibiting, in perpetuity, any use that is not consistent with, or which threatens or damages the property's universally significant values, or other trust or legal arrangement that has that effect; and

(2) The opinion of counsel on the legal status and enforcement of such a prohibition, including, but not limited to, enforceability by the Federal government or by interested third parties.

In addition, if the owner(s) is willing, a right of first refusal may be given for acquisition of the property, along with a guaranteed source of funding and appropriate management framework, in the event of any proposed sale, succession, voluntary or involuntary transfer, or in the unlikely event that the requirements outlined above prove to be inadequate to ensure the preservation of the property's outstanding universal value. The protection measures for each private property being considered for possible nomination to the World Heritage List will be reviewed on a case-by-case basis to ensure that the

§ 73.15

requirements set forth above fulfill the mandate of Pub. L. 96-515.

§ 73.15 International World Heritage activities.

(a) The Assistant Secretary, and other officials as appropriate, may represent the U.S. at meetings of the World Heritage Committee, the Bureau of the World Heritage Committee, or other international organizations or agencies which have activities that relate to World Heritage.

(b) In furtherance of Article 6 of the Convention and to the extent that resources permit, the Department will encourage and provide international assistance to other nations in activities relating to the identification, protection, conservation, and preservation of cultural and natural properties. The Secretary, or his designee, may develop and make available to other nations and international organizations training in, and information concerning, professional methods and techniques for the preservation of historic and natural properties (16 U.S.C. 470d; 16 U.S.C. 1537).

(c) NPS staff, in conjunction with the Federal Interagency Panel for World Heritage, provide support for the Assistant Secretary's international activities, including the preparation of documentation, briefing papers, and position statements.

(d) The Assistant Secretary responds, on behalf of the U.S., to requests from the World Heritage Committee, international heritage conservation organizations, or other nations regarding U.S. participation in the World Heritage Convention.

§ 73.17 Public information and education activities.

(a) To the extent that time and resources permit, owners of U.S. properties approved for inclusion on the World Heritage List are encouraged to publicize the status of the property, through appropriate signs, plaques, brochures, public dedication ceremonies, and interpretive displays or programs.

(b) The Department, through the NPS, may provide guidance to owners of U.S. World Heritage properties in de-

36 CFR Ch. I (7-1-12 Edition)

veloping publicity, educational, and/or interpretive programs.

(c) The NPS is responsible for developing and distributing general information materials on the World Heritage Convention, including brochures, slideshows, lectures, or other presentations in order to strengthen appreciation and understanding of the importance of World Heritage as set forth in Article 27 of the Convention.

PARTS 74-77 [RESERVED]

PART 78—WAIVER OF FEDERAL AGENCY RESPONSIBILITIES UNDER SECTION 110 OF THE NATIONAL HISTORIC PRESERVATION ACT

Sec.

78.1 Authorization.

78.2 Definitions.

78.3 Federal Agency decision to waive responsibilities.

78.4 Federal Agency notice.

78.5 Review by the Secretary of the Interior.

AUTHORITY: National Historic Preservation Act of 1966, as amended, 16 U.S.C. 470 *et. seq.*

SOURCE: 50 FR 7590, Feb. 25, 1985, unless otherwise noted.

§ 78.1 Authorization.

Section 110 of the National Historic Preservation Act of 1966, as amended ("Act"), sets forth certain responsibilities of Federal agencies in carrying out the purposes of the National Historic Preservation Act of 1966. Subsection 110(j) authorizes the Secretary of the Interior to promulgate regulations under which the requirements in section 110 may be waived in whole or in part in the event of a major natural disaster or an imminent threat to the national security. Waiver of responsibilities under section 110 does not affect an agency's section 106 responsibilities for taking into account the effects of emergency activities on properties included in or eligible for the National Register of Historic Places and for affording the Advisory Council on Historic Preservation an opportunity to comment on such activities.