HISTORIC PRESERVATION

OVERSIGHT HEARING

BEFORE THE

SUBCOMMITTEE ON NATIONAL PARKS, FORESTS, AND LANDS

OF THE

COMMITTEE ON RESOURCES
HOUSE OF REPRESENTATIVES

ONE HUNDRED FOURTH CONGRESS

SECOND SESSION

ON

H.R. 3031

A AMEND THE ACT OF OCTOBER 15, 1966 (80 STAT. 915) AS AMENDED, ESTABLISHING A PROGRAM FOR THE PRESERVATION OF ADDITIONAL HISTORIC PROPERTY THROUGH OUT THE NATION, AND FOR OTHER PURPOSES

H.R. 563

T0 AMEND THE NATIONAL HISTORIC PRESERVATION ACT TO PROHIBIT THE INCLUSION OF CERTAIN SITES ON THE NATIONAL REGISTER OF HISTORIC PLACES, AND FOR OTHER PURPOSES

H.R. 1179

T0 AUTHORIZE APPROPRIATIONS FOR THE PRESERVATION AND RESTORATION OF HISTORIC BUILDINGS AT HISTORICALLY BLACK COLLEGES AND UNIVERSITIES

MARCH 20, 1996—WASHINGTON, DC

Serial No. 104–78

Printed for the use of the Committee on Resources



U.S. GOVERNMENT PRINTING OFFICE

24–568 CC WASHINGTON : 1996

For sale by the U.S. Government Printing Office
Superintendent of Documents, Congressional Sales Office, Washington, DC 20402
ISBN 0-16-053413-5

AUTHENTICATED
U.S. GOVERNMENT
INFORMATION
GPO

COMMITTEE ON RESOURCES

DON YOUNG, Alaska, *Chairman*

W.J. (BILLY) TAUZIN, Louisiana
JAMES V. HANSEN, Utah
JIM SAXTON, New Jersey
ELTON GALLEGLY, California
JOHN J. DUNCAN, JR., Tennessee
JOEL HEFLEY, Colorado
JOHN T. DOOLITTLE, California
WAYNE ALLARD, Colorado
WAYNE T. GILCHREST, Maryland
KEN CALVERT, California
RICHARD W. POMBO, California
PETER G. TORKILDSEN, Massachusetts
J.D. HAYWORTH, Arizona
FRANK A. CREMEANS, Ohio
BARBARA CUBIN, Wyoming
WES COOLEY, Oregon
HELEN CHENOWETH, Idaho
LINDA SMITH, Washington
GEORGE P. RADANOVICH, California
WALTER B. JONES, JR., North Carolina
WILLIAM M. (MAC) THORNBERRY, Texas
RICHARD (DOC) HASTINGS, Washington
JACK METCALF, Washington
JAMES B. LONGLEY, Maine
JOHN B. SHADEGG, Arizona
JOHN E. ENSIGN, Nevada

GEORGE MILLER, California
EDWARD J. MARKEY, Massachusetts
NICK J. RAHALL II, West Virginia
BRUCE F. VENTO, Minnesota
DALE E. KILDEE, Michigan
PAT WILLIAMS, Montana
SAM GEJDENSON, Connecticut
BILL RICHARDSON, New Mexico
PETER A. DEFAZIO, Oregon
ENI F.H. FALEOMAVAEGA, American Samoa
TIM JOHNSON, South Dakota
NEIL ABERCROMBIE, Hawaii
GERRY E. STUDDS, Massachusetts
SOLOMON P. ORTIZ, Texas
OWEN B. PICKETT, Virginia
FRANK PALLONE, JR., New Jersey
CALVIN M. DOOLEY, California
CARLOS A. ROMERO-BARCELÓ, Puerto Rico
MAURICE D. HINCHEY, New York
ROBERT A. UNDERWOOD, Guam
SAM FARR, California
PATRICK J. KENNEDY, Rhode Island

DANIEL VAL KISH, *Chief of Staff*
DAVID DYE, *Chief Counsel*
CHRISTINE KENNEDY, *Chief Clerk/Administrator*
JOHN LAWRENCE, *Democratic Staff Director*

SUBCOMMITTEE ON NATIONAL PARKS, FORESTS AND LANDS

JAMES V. HANSEN, Utah, *Chairman*

JOHN J. DUNCAN, JR., Tennessee
JOEL HEFLEY, Colorado
JOHN T. DOOLITTLE, California
WAYNE ALLARD, Colorado
RICHARD W. POMBO, California
PETER G. TORKILDSEN, Massachusetts
J.D. HAYWORTH, Arizona
BARBARA CUBIN, Wyoming
WES COOLEY, Oregon
HELEN CHENOWETH, Idaho
LINDA SMITH, Washington
GEORGE P. RADANOVICH, California
JOHN B. SHADEGG, Arizona
JOHN E. ENSIGN, Nevada

BILL RICHARDSON, New Mexico
NICK J. RAHALL II, West Virginia
BRUCE F. VENTO, Minnesota
DALE E. KILDEE, Michigan
PAT WILLIAMS, Montana
ENI F.H. FALEOMAVAEGA, American Samoa
GERRY E. STUDDS, Massachusetts
FRANK PALLONE, Jr., New Jersey
CARLOS A. ROMERO-BARCELÓ, Puerto Rico
MAURICE D. HINCHEY, New York
ROBERT A. UNDERWOOD, Guam
PATRICK J. KENNEDY, Rhode Island

ALLEN FREEMYER, *Staff Director/Counsel*
STEVE HODAPP, *Professional Staff*
LIZ BIRNBAUM, *Democratic Counsel*

CONTENTS

	Page
Hearing held March 20, 1996	1
Text of:	
H.R. 563	159
H.R. 1179	198
H.R. 3031	74
Statements of Members:	
Clement, Hon. Bob, a U.S. Representative from Tennessee	64
Duncan, Hon. John, a U.S. Representative from Tennessee	62
Dunn, Hon. Jennifer, a U.S. Representative from Washington	61
English, Hon. Phil, a U.S. Representative from Pennsylvania	39
Hansen, Hon. James V., a U.S. Representative from Utah	1
Herger, Hon. Wally, a U.S. Representative from California	39
Richardson, Hon. Bill, a U.S. Representative from New Mexico	61
Statements of witnesses:	
Antone, Lt. Governor Cecil, Gila River Indian Community, Keeper of the Treasures, Cultural Council of American Indians, Alaska Natives and Native Hawaiians	34
Prepared statement	149
Berditschevsky, Michelle, Spokesperson, Mt. Shasta Heritage Council	49
Prepared statement	180
Bittner, Judith, President, National Conference of State Historic Preservation Officers	6
Prepared statement	92
Buckskin, Floyd J., Chairman, Native Coalition for Cultural Restoration of Mt. Shasta	48
Prepared statement	176
Curry, George, Editor-in-Chief, Emerge Magazine	72
Downer, Alan, Ph.D, Director, Navajo Nation, Historic Preservation Department (prepared statement)	216
Harris, Dr. Roland A., Executive Vice President and Chief Operating Officer of Knoxville College	70
Kilpatrick, Kathleen S., Deputy Director, Virginia Department of Historic Resources	10
Martin, Wilson, Deputy, State Historic Preservation Officer, State of Utah	7
Prepared statement	100
Marzulla, Nancie G., President and Chief Legal Counsel, Defenders of Property Rights	21
Prepared statement	120
Micsak, Robert W., National Mining Association	18
Prepared statement	108
Neumann, Loretta, Board of Directors, American Cultural Resources Association	32
Prepared statement	143
Norton, Edward M., Jr., Vice President for Public Policy, National Trust for Historic Preservation	31
Prepared statement	137
Ponder, Dr. Henry, President, Fisk University	67
Prepared statement	203
Reynolds, Gray, Deputy Chief, Forest Service	41
Secakuku, Ferrell, Chairman, The Hopi Tribe (prepared statement)	210
Seifert, Dr. Donna J., Member, Society for American Archeology, Society for Historical Archeology	29
Prepared statement	131

Page

Statements of witnesses—Continued
Slater, Cathryn Buford, Chairman, Advisory Council on Historic Preservation 2
Prepared statement 76
Stevenson, Katherine Associate Director, Cultural Resource Stewardship and Partnerships ..... 4,..43, 69
Prepared statements ..... 85,..162, 207
Tallerico, Frank, Jr., retired Superintendent of Schools, Siskiyou County, Yreka, California 53
Thackeray, George, former Siskiyou County Supervisor, Etna, California . 50
Trope, Jack F., Sant' Angelo & Trope (prepared statement) 189
Communications submitted:
Carpelan, Mary: Letter of March 11, 1996, to Hon. Wally Herger 195
Hall, Roy V. Jr.: Letter of March 15, 1996, to Hon. Wally Herger 197
List of names of persons submitting material for hearing record 222
List of names of persons who wrote similar letters on H.R. 563 223

HISTORIC PRESERVATION

WEDNESDAY, MARCH 20, 1996.

HOUSE OF REPRESENTATIVES, SUBCOMMITTEE ON NATIONAL PARKS, FORESTS AND LANDS, COMMITTEE ON RESOURCES, WASHINGTON, DC.

The subcommittee met, pursuant to call, at 9:00 a.m., in room 1334, Longworth House Office Building, Hon. James V. Hansen [chairman of the subcommittee] presiding.

STATEMENT OF HON. JAMES V. HANSEN, A U.S. REPRESENTATIVE FROM UTAH; AND CHAIRMAN, SUBCOMMITTEE ON NATIONAL PARKS, FORESTS AND LANDS

Mr. HANSEN. Good morning. I welcome members and witnesses today and look forward to a most informative hearing on several historic preservation issues. Due to the number of witnesses, I will place my full opening statement in the record and encourage any others who come to do likewise.

Like the many other responsibilities of the subcommittee, preserving the historical, archeological, and cultural history of this country is critically important. I am pleased to be starting the long overdue process of oversight of existing historic preservation laws, policies, and regulations.

However, in addition to beginning the oversight process, there is before the Subcommittee the more pressing business of reauthorization of the Advisory Council on Historic Preservation. I have introduced a bill, by request, to provide a five-year reauthorization of the Council, which is due to expire at the end of the current Fiscal Year.

Due to the timeframe of this expiration, I would particularly appreciate hearing from members of the subcommittee, on both sides of the aisle, with regard to their views on H.R. 3031. And we will now pick those folks up later. And we will go to the witness list.

Our first panel on H.R. 3031 is Ms. Cathryn Slater, Chairman of the Advisory Council on Historic Preservation; Katherine Stevenson, Associate Director, Cultural Resource Stewardship and Partnerships; Judith Bittner, President of the National Conference of State Historic Preservation Officers; Wilson Martin, Deputy, State Historic Preservation Office, State of Utah; Kathleen S. Kilpatrick, Deputy Director, Virginia Department of Historic Resources.

Let me thank each and every one of you for being here; getting up and taking the time to be here. We are impressed that you would do that. Now, as I look at this list, it is going to be a relatively long hearing, and I know you have all got some very impor-

tant information that we want. And your entire statement will be included in the record.

Because of the length of this hearing, if it doesn't offend any of you, I would like to limit you to five minutes. Would that be OK? Anybody here just have a burning desire that they got to go six? All right. I appreciate that. It is hard to stay in your time. Members of Congress are notorious for saying, "I will take five minutes," and speak for 40 and wonder how they talk so long. I am sure you folks will do better than members of Congress.

Just to make sure we are all on time, if you notice in the House, we have someone keep time, and we bang the gavel and say, "The gentleman or lady's time has expired." Here we do it a bit differently. In front of you, you notice three lights. See that green light right there? When that comes on, that means you start.

When the yellow light comes on, it is just like a traffic light. See if you can run it. Without being red around the edges, you are OK. And at the end of that, I bang the gavel and shout at you. Not really, but if you can stay within that, we would really appreciate it. And, Cathryn Slater, could we start with you? We will just go right across. Anyone object to that? The time is yours, and we thank you for being here.

STATEMENT OF CATHRYN BUFORD SLATER, CHAIRMAN, ADVISORY COUNCIL ON HISTORIC PRESERVATION

Ms. SLATER. Thank you, Congressman Hansen, for having this hearing and for introducing the legislation to reauthorize the Council. You have my prepared statement which discusses—

Mr. HANSEN. Excuse me. Could we get you to pull that mike over just a little in front of you there and slide it up? I apologize for not mentioning that sooner.

Ms. SLATER. OK. Thank you. You have my prepared statement which discusses in detail the role and function of the Council, as well as the operation of Section 106 review as administered by the Council. I just wanted to take this time to summarize briefly and then emphasize some key points in that testimony for your consideration.

First of all, the Council is an independent Federal agency that was created by the National Historic Preservation Act of 1966. Originally, the Council was administered and staffed by the National Park Service, but over time it became apparent, after a number of controversial cases that included historic properties administered by the National Park Service, that there needed to be an independent voice with its own staff. And the law was amended in 1976 to do this.

The Council plays a pivotal role in the various roles in the preservation partnership. Its role is to help facilitate the process between the Federal agencies, the States, and the local private citizens' groups and other local governments.

The Council itself is a cabinet-level body that is composed of private citizens and experts in the field that are appointed by the President, along with some Federal agency heads and representatives of State, local, and tribal governments.

It provides a forum for influencing Federal policy, programs, and decisions as they affect historic properties in communities and on

public lands nationwide. The Council is served by a professional staff of 34 and has an annual budget of 2.5 million.

As articulated in the law, the Council's primary role is to ensure that ultimately Federal agencies internalize consideration of historic properties when initiating any of their actions. The Act's vision was to have Federal agencies operate as responsible stewards of our nation's cultural resources and to internalize those processes into their daily operations. With continued Council assistance, the agencies succeed in this task.

However, in the interim, before the long-term goal is achieved, there needs to be a process that ensures that the historic preservation needs of the locality are balanced with Federal project requirements. The mechanism that ensures this long-term goal's achievability is the Section 106 review process. It applies when only two conditions are met. First, historic property is present. Second, the property may be affected by a Federal action.

The Section 106 review process guarantees State and local governments, private citizens, and organizations will have some meaningful involvement in the Federal project planning and will be able to influence the Federal action with what they think is important to their local community.

Under Section 106 of the National Historic Preservation Act which the Council administers, Federal agency officials consider the impact of their programs, and we work together to achieve a balanced solution. These processes incorporate ways to protect and enhance properties through their land use planning, funding, and licensing actions.

Most of the cases that come before the Council result in negotiated solutions. In fact, I might say that I think last year 99 percent of the cases that went through the 106 review process resulted in resolution and agreement among all the parties affected.

Since I was appointed Chairman in 1993, the Council has participated in review and consultation for approximately 8,000 projects around the country. And although it is difficult to state precisely, we estimate that these projects involved affects on at least 25,000 properties of either National, State, or local historic significance.

We have actively participated in consultation and helped to negotiate about 1,000 agreements, spelling out measures to avoid, minimize, or mitigate historic property impact and have issued formal advisory comments on further 30 extremely controversial projects where agreement could not be reached.

Over the same period, we have given informal planning assistance, responded to public requests to investigate Federal actions, and monitored or provided dispute resolution in an additional 10,000 or so situations, and also offered training courses that have reached nearly 3,000 individuals. I believe the Council has been and remains an effective organization in doing what we do for our size and our budget.

I would like to clear up some common misconceptions about the Council's role in historic preservation. The Council does not designate properties as historic. The Council does not give grants or financial assistance. The Council does not have veto authority over Federal actions or Federal assistance. No one does that except the particular Federal agencies themselves.

The Council does not regulate private property. Only when a private property owner seeks Federal assistance or a license or a permit does the Section 106 process apply. Then it is only the Federal agency that is bound to follow the process and consider the Council's comments.

As you could see from my testimony, I also am the State Historic Preservation Officer in the State of Arkansas. And I can tell you from my personal experience that the Advisory Council is an integral part and a key player in the negotiations especially in the difficult and complex cases as they arise. Most of the stuff that I deal with in Arkansas as an SHPO is fairly routine, and we can reach agreement fairly rapidly with all parties involved in the process.

But there are some times when there are more Federal agencies than just one involved in a project, or there are numerous groups of private citizens who have an interest in the process. And the Council's perspective, which comes from dealing with cases at the national level, has certainly helped to facilitate things in my State.

The Council, through the 106 process, provides a means and an opportunity for people to be heard. And it is essential to protect the historic resources that are valued in that community. Without the Council's voice, many times the local citizens would not even be consulted or considered. The process would merely be done through the paperwork in the agency's office, and the local citizens would not know about it until their resource that they considered important was impacted.

The Council, through the Section 106 process, can bring balance and common sense to historic preservation, while serving the—oops—I see my red light is on.

Mr. HANSEN. Fast five minutes, isn't it?

Ms. SLATER. Yes. I will stop there. I am not used to looking out of the corner of my eye for the red light. If you have any other questions, I will be glad to answer them.

[The Parpared Statement of Ms. Slater may be found at the end of hearing:]

Mr. HANSEN. Appreciate your testimony. We will look it over, and we will probably have questions at the end of the panel. Katherine Stevenson, we appreciate the Park Service always being with us. We will turn the time to you.

STATEMENT OF KATHERINE STEVENSON, ASSOCIATE DIRECTOR, CULTURAL RESOURCE STEWARDSHIP AND PARTNERSHIPS

Ms. STEVENSON. Thank you, Mr. Chairman. We appreciate the opportunity to report on two issues, both the state of the National Historic Preservation program and also the Department's position on H.R. 3031, the reauthorization of the Advisory Council.

October 15 of this year marks the 30th anniversary of the National Historic Preservation Act. On that day in 1966, the Congress declared the protection of significant historic properties across this country to be a national policy. That Act encourages and supports America's effort to preserve the tangible evidence of our past for the benefit and enjoyment of future generations of Americans.

I am here to report to you that through those 30 years, and I have been a personal participant for 25 of those 30 years, a com-

bined partnership of private citizens, industry and business, and Federal, State, tribal, and local governments have worked together to create a cost-effective, successful, and model Federal program.

We can say model program without false pride since it is a true partnership between the States, tribal governments, and the Federal Government, supported not by heavy-handed and costly Federal structure, but one developed, directed, and managed by partners at all levels.

Historic places fill a fundamental human need to know who we are as a people and as individuals. We search for our ancestral roots through family histories and by visiting and knowing where our ancestors stood, lived, and worshiped.

No synthetic or cyber approximation can equal the transcendent experience of standing where Brigham Young and his followers first saw the Great Salt Lake Valley, or where young servicemen and women served at Dutch Harbor Operating Base in the Aleutians, or where young soldiers faced each other and died at Gettysburg or Honey Springs or Glorietta Pass.

Many historic places are associated with great leaders and great events. But more often than not, the American story was played out at everyday places by everyday people whose names are not recorded in history books.

The National Register of Historic Places, established by the National Historic Preservation Act 30 years ago, is unique to the world and very American in its recognition of historic properties significant to its everyday citizens. Most properties are added to the National Register because communities and local property owners wish to preserve and enhance a sense of unique identity of time and place for themselves, their children, and their children's children.

Preserving historic places makes sense not only to the heart, but also to the pocketbook. Community revitalization efforts based on preservation rather than demolition have proven far more successful in stabilizing neighborhoods, fostering community pride, and enhancing the local tax base.

In fact, most of the $8 billion per year tourist industry in Virginia is generated by Americans visiting historic sites and communities. In addition, the Federal tax incentives that you all have passed have generated $17 billion in 20 years in cities and towns.

Finally, I would like to address H.R. 3031, which provides for the reauthorization of the Advisory Council. The National Park Service wholeheartedly endorses the reauthorization of the Advisory Council.

The Council is an essential partner in the National Historic Preservation program about which I have been speaking. It advises the President and Congress on matters relating to historic preservation and guarantees public interest and participation in decisionmaking that affects our nation's historic resources. It is with the Advisory Council that Federal agencies must consult to ensure that we consider the effects of our projects on significant historic properties, thus protecting community values.

We also support the Advisory Council's efforts to revise their regulations to make them more efficient and less burdensome. The Council's greatest value is that it can use its expertise to resolve

conflicts and help all parties negotiate in good faith to reach agreements that facilitate Federal projects and protect local historic resources.

The success of this unique 30-year partnership is a balance among partners whose whole is greater than the sum of its parts. We value each of our partners and celebrate the nation's 30 years of success in historic preservation. Thank you very much, Mr. Chairman.

[Prepared Statement of Ms. Stevenson may be found at the end of hearing.]

Mr. HANSEN. Thank you. We appreciate your testimony. Judith Bittner, we will turn the time to you. And pull that mike up close to you if you would. Thank you.

STATEMENT OF JUDITH BITTNER, PRESIDENT, NATIONAL CONFERENCE OF STATE HISTORIC PRESERVATION OFFICERS

Ms. BITTNER. My name is Judy Bittner. I am the Alaska State Historic Preservation Officer and the current President of the National Conference of State Historic Preservation Officers and want to thank you on behalf of all the States for the opportunity to testify before you today.

I would like to emphasize a few points that are in our prepared statement. One is that we urge the quick reauthorization of the Advisory Council on Historic Preservation. The independent Advisory Council is an essential partner in the historic preservation programs and the Section 106 process.

The States are also integral partners in that process. It is a system that has been working well for the last 30 years. It is the type of decentralized participatory program that is being sought by other programs today.

The Section 106 process provides a forum for discussion of preservation issues important to the individuals and communities in each one of our States. The success of the program is dependent on all partners fully participating in this process.

Improvements can be made to the Section 106 process. We do not believe that statutory changes are needed to make this happen. I think that administrative and regulatory changes can accomplish the changes that are being put forward and recommended by the National conference of State Historic Preservation Officers.

For one, we would like to see the Council refocus its efforts on outcomes rather than process. We would like to get the Council away from the case-by-case review and allow States and agencies to take the Section 106 process through the public participation to finalization when there is full agreement. Historic preservation programs have matured in the past 30 years, and it is time to acknowledge the experience and maturity of this program.

However, when there is not agreement or in situations when there are many agencies and complex historic preservation issues involved, the Council plays a very critical role as mediator. From my own experience, this is one of the most significant roles of the Council. We have used them in those most difficult cases. They have helped parties come to agreement through our memorandums of agreement. And I think the current draft regulations incorporate

many of these changes and would encourage further development in that area.

Another area that we would like to see further development is the Council's work with the Federal agencies, helping them develop historic preservation programs and fully integrate historic preservation in their day-to-day operation. This is especially true for the land managing agencies in Alaska because so much of our State is owned and managed by the Federal Government.

If they can get away from the project-by-project culture resource management approach and embrace their other existing responsibilities and become proactive in assisting Federal agencies develop Historic Preservation programs, the Section 106 will go much more smoothly and efficiently.

Here is where the Council's training program is very important. We have found that those people working with the process, if they are familiar with Section 106 procedures, usually do not have a problem. It is usually those that are not familiar with the process that do have these difficulties.

As Federal agencies who administer programs are passing on their funds and the compliance to recipients, we found, in Alaska, that we have more and more Section 106 compliance problems with individuals and agencies because these people do not have training, have not followed the process or have been given any guidance. We think that as agenices move in this direction, the Council would be very helpful in their training role. These problems are solvable and urge that you reauthorize the Advisory Council. Thank you.

[Prepared Statement of Ms. Bittner may be found at the end of hearing.]

Mr. HANSEN. Thank you. You know, I am always uncomfortable seeing people stand back there. If it wouldn't embarrass you to death, I would welcome you to come up and sit in this inner horseshoe here. But if you are comfortable standing—that is all right. John Siberling started doing that years ago, and I guess if John did it, it is OK with me. Thank you for your statement. Mr. Martin from the great State of Utah, welcome.

STATEMENT OF WILSON MARTIN, DEPUTY, STATE HISTORIC PRESERVATION OFFICER, STATE OF UTAH

Mr. MARTIN. Thank you, Mr. Chairman. I would like to recognize my son Paul who is here with me on the front—

Mr. HANSEN. Where is Paul sitting? Paul, welcome to the committee. It is great to see you. I have a son Paul also. Mine is a wee bit older than you, but it is nice to see you here.

Mr. MARTIN. He wanted to see if you guys were as good as the press say you are.

Mr. HANSEN. Well, we are grateful to have Paul with us. He adds a lot to our meeting. We will turn the time to you, sir.

Mr. MARTIN. Thank you, Mr. Chairman. The statutory structure of the Federal agency, SHPO, and Council was designed to educate the parties regarding consistent standards of historic preservation. The Council's role was included in a detailed review of the individual actions and decisions of other parties.

This all-inclusive involvement by the Council as a Federal agency created to oversee the process may have been initially needed as

the Federal agencies and States were not experienced or trained in preservation, nor was preservation a priority or goal of the agencies. This is no longer the case.

The Council has grown beyond its original consulting and advisory role. Through the process of it being involved in individual case decisions, as well as programmatic agreements between agencies, it has become a regulatory agency. Its involvement in individual Federal agency undertakings has made it appear to be engaged in the management of agency operations and decisions and, concerning the SHPO, in superseding State interests.

The Council undertook and now has been given control over the process through its rulemaking authority. Under the Council's regulation, this process of consultation has developed a complexity that overburdens good intentions and allows the process to become more important than the products of preservation.

We spend more time on the paperwork of the process and less on actual preservation and restoration. In addition, roles as well as decisionmaking authority have become confused. The SHPO defers to the Council, the Council defers to the agency, and the agency defers to the SHPO.

Let me give you my understanding, my vision, of how this Act can work and how it needs to work to be more effective. The Act needs to be flexible in order to facilitate good decisions by the agencies. The agency, in making its decisions, needs to consult with professionals and others interested in preservation who should be sensitive to local history, resources, and governmental interests; that is, the State Historic Preservation Office.

Now, let me talk about the Council and how it should be involved in the process. I do not think the Council should be dissolved or have no interest or involvement in the process as a whole. However, it no longer needs to be involved in the individual preservation decisions of the agency, as the agency can make good preservation decisions and the agency should be responsible for its decisions.

The Council should be involved with how the Federal agency on the national level is fulfilling that agency's duties under the Act. The Council should be looking on a programmatic level rather than a project level at how each Federal agency is managing its preservation program and reporting Council observations and suggestions to the President, the Congress, and the agencies.

The Council will be seeking consistency with and providing the vision of the goals and purposes of the Act on the national level. These are the duties as set forth in Section 202 which are not the duties of a regulatory agency.

I want to talk about Utah's experience. We have a State statute that parallels the Act except there is no advisory Council or other like entity involved in the State process. However, the public does take a keen interest and is regularly involved in preservation issues.

State agencies, being responsible for their decisions, are empowered to and actively seek creative solutions to preservation issues and now are seeing historic preservation as opportunities and as having economic value, not as obstacles. This State process works

expeditiously while ensuring adequate attention is given to cultural and historic resources. This is what the Act was meant to do.

Mr. Chairman, the Utah agency responsible for managing and maintaining State buildings has adopted as its mission statement, "Maintaining Quality for Utah's Heritage." The State Division of Trust Lands now has staff archaeologists to work in-house on preservation issues. The State Division of Facilities Construction and Management now has architects trained in preservation technology.

Public/public and public/private partnerships are being created in ever-increasing numbers, focused on and built upon preservation and heritage tourism. The Mining Heritage Alliance is creating public experiences and destinations while preserving and restoring historic mine sites and structures.

The Trails Consortium in Utah is preserving historic trails while providing historic interpretations and unique experiences for the public. The list goes on and on. Note should also be made that it is the State Department of Economic Development that is the central and primary agency housing these developments.

So what should Congress do? It is my recommendation that you not eliminate the Council but refocus its energies and interests toward the national Federal interests I have outlined. This will allow the States a clear voice as a consulting party, not as a regulator, in working with Federal agencies on their decisions that impact the resources and heritage of the individual States.

It will return the Council to its roots of assisting Federal agencies in meeting their preservation duties under the Act and will allow the Council to develop a national Federal preservation mission.

By way of legislative action, Section 106 needs to be amended to have Federal agencies afford the SHPO, rather than the Council, the reasonable opportunity to comment on and provide professional advice concerning any undertaking. Section 211 needs to be amended so that the authority to promulgate rules and regulations governing this process of preservation is not exercised by the Council but by each Federal agency in connection with adoption of its preservation program.

Similarly, Section 110[a][2][e] needs to be amended to provide that an agency's procedures for compliance with 106 is consistent with the Act, not the regulations issued by the Council. This will make clear the roles in the process.

The Federal agency makes the decisions concerning its actions, that a consulting process is initiated through the SHPO concerning preservation issues involved in the agency's undertaking, and the Council is involved in the overall preservation efforts of the Federal agencies regarding consistency with the purpose of the Act.

There may be some other suggestions and solutions which would achieve this vision, clearly define the roles of the various parties, and permit successful preservation efforts under the Act. The State of Utah supports those alternatives.

In Utah, we have also seen in Sanpete County, a rural county in an economically depressed area, struggling to provide opportunities for its sons and daughters. This county has set up now a heritage tourism strategic initiative. This is a partnership bringing Fed-

eral-State agencies together in partnership with four communities who control the process under their direction and has allowed for preservation issues to be developed in coordination with those communities.

This is what we hope to see in Utah, a clear, simple system where the State has an opportunity to comment, where the Federal agency is responsible for making its decisions, and where the Advisory Council oversees a process, not on an individual basis but on a programmatic basis. Thank you, Mr. Chairman.

[Prepared Statement of Mr. Martin may be found at the end of hearing.]

Mr. HANSEN. Thank you very much; appreciate those suggestions. The State of Utah, you know, in Money Magazine was determined the best-managed State of all. I don't know where Minnesota came on that, Bruce, but I know it must have been someplace.

Mr. MARTIN. We work hard on it, Mr. Chairman.

Mr. HANSEN. You folks that are standing in the back, if you are uncomfortable there, we welcome you to come up and take the chairs on the inside horseshoe here if you are so inclined. If you are comfortable standing, that is up to you. Our next witness is Kathleen Kilpatrick. We are grateful to have you here. We will turn the time to you.

STATEMENT OF KATHLEEN S. KILPATRICK, DEPUTY DIRECTOR, VIRGINIA DEPARTMENT OF HISTORIC RESOURCES

Ms. KILPATRICK. Thank you, Mr. Chairman. I am honored to be here on behalf of the Commonwealth of Virginia to present this testimony.

Virginia has been blessed with a very rich cultural heritage. We are committed to preserving that heritage, not squandering it, and that is certainly true of those historic properties and sites that give special texture and meaning to the environment.

In working to ensure that future generations enjoy the full benefits of their patrimony, we are guided by a keen sense of the need to be true to the principles that define our cultural heritage: a commitment to limited government, a respect for private property, and recognition of the importance of encouraging and rewarding personal responsibility and initiative.

For these reasons, in Virginia we have focused our efforts not on regulations and mandatory programs, but on working with citizens and communities to help them realize their goals for themselves. We seek to provide leadership to encourage private and community-based stewardship of historic resources.

We believe that the principal role of government is to foster and support stewardship by offering guidance, technical assistance, recognition, and incentives to encourage private efforts. As your subcommittee proceeds with its review, we recommend the model we have adopted in Virginia to ensure that the defining principles of our cultural heritage are fully reflected in preservation programs and policies.

One of the most appropriate ways in which any government can provide leadership is by serving as an exemplary steward of public property and with respect to public actions. Thus, Section 110 of the Act and Section 106, the most far-reaching component of the

Act, which requires the Federal Government to consider significant historic properties when planning a public undertaking.

The complexity and reach of Federal programs have, however, increased over the years to the point at which projects and their sponsors are required to comply with Section 106 even when the actual level of Federal involvement is insignificant and virtually nonexistent from a common sense approach.

For example, in Virginia, we have seen a significant increase in the number of projects reviewed under Section 106 involving private sponsorship, private funding, and private property. The Federal action in many cases may be as minimal as a Rural Economic and Community Development mortgage guarantee, or a U.S. Army Corps of Engineers Nationwide Permit for a single stream crossing.

In situations such as these, the level of public involvement raises considerable question as to the appropriateness of the Section 106 review, particularly when the cost of compliance is borne by a private citizen or party.

As the nature and complexity of the Federal Government has changed, so too have the players in the process. In the East, in particular, Federal involvement is increasingly in the form of approval of private actions through means such as permits and licenses. In our view, it is time to recognize these changes and acknowledge that we need to rethink the level and need for review of certain actions.

We recommend redefining a Federal undertaking for the purpose of Section 106 so that the definition reflects a more realistic and common sense threshold for review. Such a revised definition would appropriately balance preservation, both public and private, with other public interests including cost considerations and private property rights.

Another fundamental principle that should be reinfused is flexibility. We all recognize that there is a tremendous variety across our nation, variety in the types of resources and in the interests and values of communities.

With regard to Section 106, each State Historic Preservation Office is in the best position to recognize the unique aspects of the resources and communities in the State and to ensure that appropriate consideration is given by Federal agencies in planning projects.

For these reasons, more flexibility should be given to the States to conclude the process for routine projects without the additional review by the Advisory Council currently required. In particular, the States should be able to conclude the process for review of projects which have no adverse effect and even for review of projects which have an adverse effect but are not controversial.

This would result in savings of time and cost for project sponsors. It would allow the States, who are closer to the resources, to manage those resources for the benefit of their communities and would refocus Federal efforts on providing leadership, rather than regulation. Finally, such an approach would more appropriately reflect the principles of federalism in preservation efforts.

The current role of the Advisory Council is to advise the President and Congress on historic preservation matters and to oversee the 106 review process. Unfortunately, the bulk of the Council's re-

sources is expended on reviewing relatively routine projects, many of which have been or could be satisfactorily handled at the State level.

Leadership is important and, again, I reiterate that leadership ought to be the primary focus of the government. That principle is not well served, we believe, by the daily review of more or less routine projects that ought to be left to the States.

We recommend that at most the Federal Government participate in the review of projects which affect national historic landmarks; span more than one State, such as pipelines or highways; result in disagreement between the State and the Federal agency regarding treatment; involve requests to participate by a State, a Federal agency, a locality, and members of the public with a real interest.

In these instances, the Council can provide an important perspective and help States in their efforts to achieve balance. Beyond this revised role, the Federal Government should focus on providing leadership to foster and support good stewardship through technical assistance to States, education, incentives, and recognition.

The National Register of Historic Places should be one of the principal tools of recognition, and, yet, it is perhaps the most misunderstood and misapplied aspect of our nation's historic preservation program.

The Register was envisioned as an inventory of properties which meet specific criteria of significance. Unfortunately, relaxed application of the criteria and use of the process to trigger Section 106 review have trivialized and devalued the term "significance," engendering public cynicism and an unfortunate reaction against the Register, the Register process, and even preservation in general. All too often, we seem to confuse "historic property" with "significant historic" property. There is a difference, and the Register process should be rigorous enough to make this distinction.

In order to ensure the integrity and value of a key recognition tool, we recommend a thorough reexamination of the criteria for determining significance and their application, and perhaps consideration of an adjustment in the minimum age threshold.

That concludes my remarks, and I would be happy to answer any questions.

[Prepared Statement of Ms. Kilpatrick may be found at the end of hearing.]

Mr. HANSEN. Well, thank you very much; appreciate the testimony from all the witnesses. We are grateful to have with us the gentleman from Minnesota, the former chairman of the committee, Mr. Vento. I will turn to Mr. Vento for five minutes for questions.

Mr. VENTO. Thanks, Mr. Chairman. I appreciate the testimony from Mr. Wilson. I haven't had a chance to look at some of the next panel's testimony, but I take it that one of the predicates is that this information by the Council and the Historic Preservation Act and the provisions under 106 deliver information and education in the words of this testimony.

But I suppose—and in the words of the testimony on this panel—but the next one is going to suggest that information is being misused and is adversely affecting the property rights of others.

I suppose that it is a case of if you don't know anything about it, then you can't do anything about it. And so I am very concerned about that particular attitude that wants to close down the gathering and making informed decisions.

I mean, if, as an example, we did not have the 106 process in place now—of course, I understand that you are recommending some streamlining of that. I notice that especially—I assume most of that is oversight of the Park Service.

I think though that the comments that were made by the President of the National Conference, Judith Bittner, today concerning citizen participation—if you are going to waive that 30-day period, you want to make certain that there is a basis of accountability. If we are looking at—agencies agree—that is in her testimony, you know.

If you are going to waive that, you want to be certain that—you know, because that does provide an oversight to what the National Park Service and the agency agree to. And, you know, if you waive it, then it doesn't give me, Joe Citizen, an opportunity to judge what you have done. Do you think, Ms. Stevenson, that there are other opportunities before that, or are you not concerned about that 30 days on that basis?

Ms. STEVENSON. Mr. Vento, are you talking about the owner notification provisions——

Mr. VENTO. No.

Ms. STEVENSON [continuing]. or are you talking about the——

Mr. VENTO. I am talking about the 30-day provision that——

Ms. STEVENSON. The Advisory Council regulations.

Mr. VENTO. On the basis of the agreement between the agency and the Park Service or the Council.

Ms. STEVENSON. Then I think you probably want to have someone else answer that question. The National Park Service is not involved except occasionally as a Federal agency in the Advisory Council process.

Mr. VENTO. But you are recommending in your testimony to waive it.

Ms. BITTNER. I think with the National Conference, what we would like to do is when the State and the Federal agency have come to agreement through the participatory process. Working through a memoranda of agreement and through a process of addressing how a case affects historic properties, there is public notification and participation by the public.

And so inherent in that process and concluding a Section 106 action at the State level would include the participation by the public and the notification of the negotiations by the Federal Government and the State. So it is that extra 30 days for the Council review that would extend public participation, but the public would already be participating at the State level when the State and the Federal agency negotiate.

Mr. VENTO. But you think that satisfied—but I am looking at page six of your testimony, Ms. Stevenson, so it is the third paragraph that you testified to. "Council rarely challenges what has already been agreed to by the Federal agency, State, and project applicant"—just so long as there is no confusion about why I asked you the question.

Ms. STEVENSON. Yes, sir. I understand. I am sorry.

Mr. VENTO. Yes. Beyond that, I think there has been really a natural evolution, in fact, that the Advisory Council—and maybe this question could best be addressed to Ms. Slater—the Advisory Council basically is not as involved with the—in other words, is basically ratifying what States do, is it not? And so your main work is now with the agencies and others at the Federal level in terms of negotiations?

Ms. SLATER. Yes, sir, that truly is the case. And in the current process of revising our regulations, we have heard comments from our constituents and have addressed such problems as individual case review and case-by-case involvement of the Council, and the forthcoming regulations will formalize what is already a practice at the Council.

Mr. VENTO. Mr. Martin, you testified to that specific point about more autonomy really at the State level. Do you feel that the rules and regulations are the direction that is being—the policy path that is being established is going to accomplish your end, or do you think we need to change the law?

Mr. MARTIN. I think there is some evidence we need to change the law because previously we were dealing with the regulations of the Council just two years ago, and the provisions the Council was proposing at that time from our perspective were even more regulatory. We have had no change in the statute. We had a change of heart at the Advisory Council.

And I still would think that memorandums of agreement which would be on a programmatic level which the State of Utah would like to sign with Federal agencies and the State alone without the Advisory Council would not be permitted even under their latest drafts. We would like the ability as a State to sign programmatic agreements with Federal agencies without the Advisory Council participation.

Mr. VENTO. What would be the assurance, for instance, if you had a NASA facility in Utah and signed a programmatic agreement, but wouldn't the—how would we be certain that there would be the same level of protection, the same standard of fabric restoration or maintenance I should say as would be occurring in Minnesota or New York or Florida?

Mr. MARTIN. I think that would be answered on a more programmatic than individual case view as the Advisory Council's role would not be altered from looking at the overall agency's performance. And the overall agency's performance would be looked at globally to ensure its general compliance rather than case-by-case compliance.

By doing that overall programmatic review, we feel the Advisory Council would still ensure national consistency but would not have to do that on an individual case basis or even a programmatic basis under a memoranda of agreement.

Mr. VENTO. So you agree that you would stipulate anyone that would assume that particular responsibility—any State that would assume that responsibility would have to meet the standard of national consistency?

Mr. MARTIN. Well, we think that the individual Federal agencies would develop their own regulatory requirements. And those regulations would have to be consistent——

Mr. VENTO. That is sort of a leap in faith let me tell you that—I mean, the real problem I think here is, Mr. Chairman and Mr. Martin, you know, that the Advisory Council has sort of exercised the ability and the clout at the Federal level to come to bring the agency around. So I don't know how we can tailor that. I understand the concern.

But, I mean, we need to be certain that the Federal agency has the clout in terms of the Advisory Council and the technical ability to engage them on a broader—often the agreements aren't made on a State-by-State basis, are they, Ms. Slater?

Ms. SLATER. No, they are not.

Mr. VENTO. Ms. Bittner, did you have a view on this? You, obviously, are representing the State. The States want more autonomy in this. We went through this particular exercise some time ago on a rewrite of this particular law, as you know, with the able assistance of some of my staff at that time and others.

And we sort of came—this does represent—if there is broader agreement being attained on, for instance, NASA, which was an ongoing problem at one time, if we hand this responsibility or too much of it back to the States, will we retain national consistency? How do we know if they would be complying with the overall agreement from the Advisory Council or from the Park Service?

Ms. BITTNER. I think one of the prevailing views among the majority of the States is that an active role of the Advisory Council is in providing that consistency and consultation to provide that national perspective or regional perspective.

The States do look to the Council to provide that broader perspective and participate in those programmatic agreements and assist agencies who do need assistance in developing historic preservation programs and encourage them to incorporate it in their day-to-day work. So I think most of the States do find the Council plays a very integral, important role in these kinds of actions.

Mr. VENTO. I think the impression I get from some of the testimony today is that there is some, you know, redundancy. There is, obviously, a need for it, but there is, obviously, this need to streamline things. There are some suggestions here to do that. I think we need to look at that carefully without necessarily compromising the national consistency or citizen participation.

I think it may be possible—for instance, I think that there is—I note that I think it was Katherine Stevenson, Mr. Chairman, that talked about trying to integrate the NEPA and 106 review.

Mr. HANSEN. The gentleman's time has expired; appreciate his questions. Did you have anything else?

Mr. VENTO. No, no.

Mr. HANSEN. A burning desire to say——

Mr. VENTO. I realize we have got to move along. I won't be able to stay here for all the panels, but I will hang in for a while, Mr. Chairman.

Mr. HANSEN. Appreciate the gentleman's questions. You know, if I may ask the panel, one of the concerns we have in streamlining government is doing away with redundancy, duplication, overlap-

ping, that type of thing. In the case of the Federal historic preservation program, we have similar reviews by Federal agencies, States, and Advisory Council. Do you folks think they are all necessary—all these layers? Anybody want to respond to that?

Ms. SLATER. Mr. Hansen, I would say that 80 to 90 percent of the cases that go through the Section 106 process are never viewed at the Council level. And the Council very seldom second-guesses those negotiated solutions that are worked out at the State and local level.

Where the Council has its most valuable interest in this whole process is when there is a very complicated project or where there is a project that involves many Federal agencies. I know from my own personal experience if we are working with a project where we may deal with the Federal Highway Administration, the Coast Guard if it is a bridge, the Corps of Engineers because there might be a permit involved, the Advisory Council helps to facilitate the process among the Federal agencies who may or may not have competing interests in the project.

Also, the Council is valuable when the significance of the historic property affected by the project is great, where its significance goes beyond that local community or that one private group where it may be something that has national significance and be important to more people than just the community who is getting a new bridge say.

I think that the regulations as they have been revised but not republished in the Federal Register will address some of the problems that have been identified in the 106 review process, those that have been mentioned today, and will help to streamline and get a formalized process that addresses this reinventing government and a historic preservation program, frankly, that has come of age in the 30 years since the implementation of the Act.

Mr. MARTIN. Mr. Chairman, Wilson Martin again from Utah. I think the proposed regulations go a long way to achieve that, but I still think there needs to be the ability of the State and the Federal agency to negotiate on a case-by-case and a programmatic level without the Advisory Council.

And the Advisory Council, under the proposed changes that we are recommending, would still be available for consultation purposes on difficult cases but would be brought in at request of the State and the Federal agency and would not automatically be a part of the process.

Mr. HANSEN. Thank you. Anyone else want to comment on that? The reason I bring this up is in the Advisory Council budget estimates for 97s, frankly, I am amazed at the number of cases that are reviewed—projected in 97', 4,000; 96', 3,885; 95', actual 3,791. Wow. That is a lot of cases for review. I just wonder if we are reinventing the wheel at every level of government. Does the Park Service, Ms. Stevenson, want to comment on that?

Ms. STEVENSON. We have been working very closely with the Advisory Council as they revise their regulations. And, as our testimony says, we suggest that the Advisory Council consider reviewing cases only when certain conditions exist.

For example, disagreement among the consulting parties, third party information to the effect that the process is being subverted,

potential effect on nationally significant resources as Ms. Slater has just talked about, or a Council finding that an agency or State has systematically misused the review process in some way. That is not to diminish at all the role of the Advisory Council but to focus its efforts on dispute resolution at the highest levels.

Mr. HANSEN. We have had people suggest that the Advisory Council only do the most significant cases. Now, I know you have got a definition problem—what is a significant case? It is kind of like beauty—in the eye of the beholder. But maybe there ought to be some criteria of what we look at. Anybody agree with that or disagree?

Ms. STEVENSON. Yes. I have a difficulty with that only because as you said significance and significant case are in the eye of the beholder. And something that is very, very important to a community may warrant the Advisory Council's intervention even though it may not be a building or a property of national significance. And I think that there is some danger in writing legislation that would define what that significance level is. It would be much more appropriate I think to leave that to the States to work out with the localities and the Council.

Ms. KILPATRICK. Mr. Chairman, we have recommended that the Council only look at those projects which involve national historic landmarks, more than one State such as pipelines or highways, where there is a clear disagreement between the State and Federal agencies and where the Council is requested to participate by the State or locality or interested parties. Otherwise, States should be able to conclude the process at the State level.

That would significantly reduce the number of projects going forward for review by the Council and would free up resources of the Council to focus on the leadership aspects, the technical support, and those components that are very helpful to the states in doing their job.

Mr. HANSEN. Thank you. Mr. Torkildsen from Massachusetts has joined us. Mr. Torkildsen, any questions you have for this panel?

Mr. TORKILDSEN. Thank you, Mr. Chairman, no questions but I would like to put a statement in later.

Mr. HANSEN. Would you like to yield your time to me?

Mr. TORKILDSEN. Gladly.

Mr. HANSEN. Thank you. Now, one of the major duties of the Council is ensuring that Federal agencies integrate historic preservation to their programs. Now, 30 years after the original passage of the Historic Preservation Act, are there still Federal agencies with major historic preservation responsibilities which have not developed such programs? Does anyone want to respond to that?

Mr. MARTIN. I would like to respond to that, Mr. Chairman. I think that I would like to break it down into Section 106 and Section 110. I think the emphasis of the Advisory Council and the emphasis because of that being a regulatory function has been emphasizing that section of taking into account.

I think what has not happened because we focused on the wrong priority is Section 110 which is the development of the overall positive approaches that can be—proactive approaches that can be undertaken by agencies to develop and use their resources, not reacting to development, but reacting to the opportunities—positive op-

portunities in heritage tourism. So I think that 110 has been underemphasized and 106 has been overemphasized.

Mr. HANSEN. Ms. Slater, do you want to comment on that?

Ms. SLATER. I agree with Mr. Martin that 110 has been underemphasized, and, in fact, when I was sworn in as Chairman of the Council, one of the first things I said that I thought that Council would turn its attention toward helping Federal agencies institute historic preservation in their day-to-day operations.

I think we are living in a time when there is a transition between where historic preservation was when the Act was passed in 1966. We are now looking at a program that has come of age, so to speak.

Most Federal agencies have some kind of historic preservation process embedded in their operating rules. Some of those processes could stand some improvement. Some of them are excellent. Some of them are nonexistent so there is still work to be done.

I think in this current climate, there should be a shift at the Council to get out front, if you will, to assist agencies in planning more than second-guessing actions that are after the fact.

And I think that the current process already reflects that, and we are working with the Park Service and our other partners in redoing the 110 guidelines to assist Federal agencies with just what Mr. Martin is talking about, and I think it is very important.

Mr. HANSEN. Well, thank you very much. The panel has been excellent in giving us some great information. We appreciate you taking the time to be with us here today, and we will excuse you and move to the next panel.

The next panel, II, is Mr. Robert W. Micsak, National Mining Association; Nancie G. Marzulla, President and Chief Legal Counsel, Defenders of Property Rights. If those two individuals would please come up, we would appreciate it. Mr. Martin, thank you for bringing Paul along. We appreciate it.

Mr. MARTIN. He enjoyed it, Mr. Chairman.

Mr. HANSEN. Thank you. We appreciate you being with us. As you know, we have a very heavy schedule today. And we don't like to limit you, but we don't have much choice. Do you think you can do it in five minutes?

Ms. MARZULLA. Yes.

Mr. HANSEN. OK. You see the lights in front of you? It is just like a traffic light. Don't be tempted to run the red light. Who wants to go first?

STATEMENT OF ROBERT W. MICSAK, NATIONAL MINING ASSOCIATION

Mr. MICSAK. Good morning, Mr. Chairman and members of the committee. My name is——

Mr. HANSEN. Do you want to pull that—Mr. Micsak, pull that a little closer. Thank you very much; appreciate that.

Mr. MICSAK. Sure. My name is Robert Micsak, and I am Vice President and General Counsel of Independence Mining Company. Independence is a gold mining company with mines located in Nevada and Colorado. My testimony this morning is presented on behalf of the National Mining Association. I chair the Historic Preservation Task Force for the Association's Lands Committee.

The National Mining Association is the voice of one of America's great basic industries—mining. The headquarters operations of the association's members are located in 42 states, represented in Congress by some 400 members of the House and 84 Senators. Some form of mining represented by the association occurs in all 50 states.

We deeply appreciate the opportunity to present our views to the subcommittee on the important subject of historic preservation. First and foremost, I want to state that the association supports the preservation of our nation's heritage. After all, mining is an important part of our great national story.

The voyages of Columbus were driven by dreams of mineral wealth; the industrial might of the United States was built on iron mined from the Mesabi Range beginning in the early 1800's; and gold found at Sutter's Mill, California, in 1848 led the way to the opening of the far West.

My company is intimately familiar with the historic preservation values since the Independence Mine and Mill developed by Winfield Scott Stratton in the 1890's and located on the property of our Cripple Creek and Victor Gold Mining Company has been listed at our initiative on the National Register of Historic Places.

As proponents of historic preservation values, we support the principles enunciated in the National Historic Preservation Act. In that Act, the Advisory Council on Historic Preservation was established as an independent agency of the United States. However, the Council's duties are purely advisory or hortatory in nature.

As described in the Act under Section 202, the Council is directed to do such things as advise, coordinate, encourage, recommend, review, inform and educate. This advisory nonregulatory role for the Council is also set forth and probably further amplified what has been already the subject of great discussion this morning in Section 106.

This provision establishes what is popularly known as the Section 106 process which authorizes the Council to comment to the head of any Federal agency concerning the effect of certain defined Federal undertakings on any district, site, building, structure, or object that is included in or eligible for inclusion in the National Register.

It is amazing that this very limited authorization to "comment" on certain undertakings has evolved over the years into a remarkably bureaucratic and labyrinthine regulatory process. While that process may be well intentioned, the result is an extremely complex web of time consuming and costly reviews, consultations, and other procedures contained in the Council's existing so-called Part 800 regulations—a web that the Council spins from the one thin strand of its authority to "comment."

The association objects vigorously to the Section 106 process as it exists today. That process has to be overhauled to return it to the truly advisory process Congress intended to establish when the NHPA was enacted.

Our company has been caught up in the web of the existing Part 800 regulations in our efforts to expand our operations at Cripple Creek. Although 99 percent of the land on which the mine is situated is private, nevertheless, within that 552-acre project, there

were about 45 little tiny slivers of Federal land that were administered by the Bureau of Land Management.

We had obtained our permit from the State of Colorado and were ready to begin construction when we were informed by the BLM after initial minimal interest that Federal permitting would be required too.

And, furthermore, the Federal permitting, as minor as it is, could not be completed until the entire mine and processing facility and its site and associated site was surveyed for historic properties under Section 106.

Worse, we were informed that unless we were willing to pay the costs for the survey and sign a programmatic agreement to that effect with the BLM, the Colorado SHPO, and the Advisory Council, the survey might not be completed for up to seven years. And the programmatic agreement, by the way, at least under our reading of the statute, is not authorized by anything in the Act. It is solely a creation of the Part 800 regulations.

We do not believe that our planned activities on the slivers of Federal land were undertakings, but rather than engage in a protracted fight with BLM, we signed the agreement, hired the approved BLM consultant, and watched more than 50 archaeologists fan out across our property.

They proceeded to survey not only properties placed on or determined to be eligible for placement on the Register, but also every single structure or feature, including every outhouse pit and exploration ditch, more than 50 years old located on the site.

We wound up spending directly and indirectly about 20 percent of our project costs for this archaeology clearance and, as a result, were engaged in a very extensive and costly process, all based on the thin reed of BLM taking into account the effect of our project on historic preservation values and affording the Council a reasonable opportunity to comment.

Since the NHPA Section 212 requires funding for the Council to be reauthorized before the end of fiscal year 1996, we urge that Congress not enact simple reauthorization, but rather take this opportunity to correct some of the Council's misconceptions about its role.

We urge that the Congress make certain that the Council understands its role is advisory only and, that the Council's current regulations must be revised accordingly. We also believe Congress should reinforce that the Council only has a responsibility to consult and not to oversee Federal agency historic preservation programs.

Section 106 should be reformed to ensure that it only provides a procedure to take into account historic resources, not impose substantive requirements that place the burden and cost of preservation on private parties. Furthermore, we believe the definition of undertaking contained in Section 301 should be clarified to show that the degree of Federal involvement must be significant before the Section 106 process applies.

Finally, we believe clear and reasonable limits on costs which must be incurred by private parties and complying with Section 106 should be set forth in the Act. Thank you for allowing me this opportunity to present our views to you. And with your permission,

we would be glad to augment this record. In the meantime, I will be happy to answer any questions which you might have.

[The Parpared Statement of Mr. Micsak may be found at the end of hearing:]

Mr. TORKILDSEN. [presiding] Thank you, Mr. Micsak. Now we will hear from Ms. Marzulla.

STATEMENT OF NANCIE G. MARZULLA, PRESIDENT AND CHIEF LEGAL COUNSEL, DEFENDERS OF PROPERTY RIGHTS

Ms. MARZULLA. Thank you, Mr. Chairman and members of the subcommittee. I appreciate the opportunity to testify before you here today. I intend to limit my comments to two chief points but ask that my written testimony be incorporated as part of the formal record.

My name is Nancie Marzulla, and I am President and Chief Legal Counsel of Defenders of Property Rights. Defenders is a Washington, DC, based national public interest legal foundation. Its membership consists of property owners all across the country who are interested in and direct beneficiaries of our nation's rich heritage and tradition of private property rights.

Defenders is dedicated to the proposition that property owners are the best stewards of our national and historical resources. At the same time, we also believe that government should accomplish its objectives through the constitutional way of paying for what it takes, because, as the Supreme Court has repeatedly held, the fundamental purpose of the Fifth Amendment's just compensation clause is to ensure the cost of achieving social good is not unfairly placed on the individuals singled out to bear the burden of achieving that social good.

However, because the goals and objectives of historic preservation are largely accomplished through regulation of private property and not through outright condemnation or acquisition of private property, the impact of historic preservation on private property must be carefully scrutinized.

As we all know, the notion of protecting private property rights is a historic and venerable part of our constitutional heritage in this country. But the whole notion of regulatory takings and the jurisprudence that has evolved concerning interpretation of the Fifth Amendment is all relatively new.

In fact, the jurisprudence that we deal with today basically stems from the decision of Justice Brennan that was rendered regarding historic preservation of Grand Central Station in New York City, Penn Central. That is a 1978 decision.

And so the area of law that we are dealing with and looking at some of these issues today is relatively new. My comments address our concerns and the perspective that we have when we deal with some of the concerns and issues that are brought to our attention.

The two points that I have then, based upon the area of jurisprudence that we deal with in the complaints and concerns that are brought to our attention, are as follows: the first is the fact that the eligibility and listing processes should be completely voluntary.

Once a property is listed as historic or even eligible for listing as historic, the property owner is immediately subject to the 106 review process which we have heard so much about already today.

Under the current system, the only way to remove this historic designation is to meet the criteria to delist the property which is in most cases difficult, if not, in fact, impossible to meet.

And while we note that the listing of the property is to be through voluntary means only, in order to continue a partnership with the property owner to ensure his cooperation in achieving the goals of historic preservation, that sense of voluntariness should be maintained. This could be accomplished by allowing the individual property owner to have his property delisted at anytime and for any reason.

For example, in some cases, the cost of the program to the individual outweighs its benefits. In such instances, the property owner should not be forced to bear the burden by himself of providing the social good. In other words, the property owner should be able to either have his property delisted or the government could purchase the property.

The obvious result of amending the program along these lines would be that the Advisory Council would have an incentive to respect the property rights of the owner, and the property owner, in turn, would be more likely to work toward achieving the goals of historic preservation.

In effect, it would give the affected property owner a de facto seat at the table with the Advisory Council, particularly important, again, with the Section 106 review process.

Moreover, while the listing of private property does require the consent of the owner, determining the property is eligible for listing does not require the consent of the owner. And under the current regulations, property that is eligible, as I said, is still subject to the 106 review process.

Thus, another recommendation we have is to ensure that no private property is even determined to be eligible for listing without the consent of the owner or, alternatively, to simply take eligible properties out of the 106 review process.

My second and final point is that the historic preservation and Section 106 review process should not be used as a planning or no-growth tool. One of the chief concerns we hear from affected property owners is that because the 106 review process is triggered by such a broad panoply of activities—for example, someone trying to sell his property and the potential purchaser having to obtain a federally guaranteed loan or has to obtain a Federal permit or the like automatically falls under the 106 review process.

We think that in many cases there can be an overly broad reach of the 106 review process. And coupled with that, of course, is the delay which my colleague spoke about in graphic detail from his own personal experience. As we know, excessive delay in and of itself can violate the Fifth Amendment.

We recommend the Council be required to complete the review within a timely manner. A number of months might be more a palatable length of time rather than the years that it currently can take.

In conclusion, let me say that achieving social objectives which are inconsistent with our nation's heritage of private property rights is a lose-lose proposition. The only way to ensure that generations of Americans can enjoy but will also themselves seek to

preserve our historical sites and artifacts is to ensure that those who own those resources have their property rights preserved as well. Thank you and I would be happy to answer any questions.

[The Prepared Statement of Ms. Marzulla may be found at the end of hearing:]

Mr. HANSEN. [presiding] Thank you. I will recognize the gentleman from Minnesota for five minutes.

Mr. VENTO. Thank you, Mr. Chairman. Mr. Micsak, on your activity that you used as an example here, you suggest that only about six acres of the land was Federal land?

Mr. MICSAK. Yes.

Mr. VENTO. Did you have any other permits from BLM that you seek patent of mines or minerals on those lands? Did you seek road access? Did you seek water permits exclusive of this acreage?

Mr. MICSAK. We had a 404 permit for a small piece of wetlands that was involved in the project.

Mr. VENTO. Road access?

Mr. MICSAK. No. As I said, about 99 percent of this property is private. It is all——

Mr. VENTO. I know that, but, I mean, you had to get to them?

Mr. MICSAK. Yes. I mean, it is on a state highway. Access wasn't an issue.

Mr. VENTO. You signed a seven-year programmatic agreement. Is that your concern—you had to sign that programmatic agreement in order to get the permits from BLM?

Mr. MICSAK. We signed a programmatic agreement to provide a mechanism to go through this 106 process.

Mr. VENTO. So it was an ongoing archaeological process? In other words, this was an ongoing process—sort of work in progress? It was sort of a turnkey agreement. Is that right? So that you turned the key. You signed the agreements that you could get to work and do your mining?

Mr. MICSAK. No.

Mr. VENTO. It wasn't a turnkey operation? You weren't permitted to go ahead and do your mining then?

Mr. MICSAK. When we signed the programmatic agreement, it set the stage for the steps that we were to follow to ultimately receive the clearance to proceed with construction. I don't know——

Mr. VENTO. You didn't proceed with your mining?

Mr. MICSAK. We have since then. Yes.

Mr. VENTO. Oh, you did?

Mr. MICSAK. Right.

Mr. VENTO. So you signed a programmatic agreement?

Mr. MICSAK. Right.

Mr. VENTO. And so that is a turnkey operation. So you opened the door, and you went ahead and started your work?

Mr. MICSAK. We started the work on the archaeology and survey part of it.

Mr. VENTO. Well, I know you started it, but you also started the mining activity almost simultaneously, didn't you?

Mr. MICSAK. No. No, we did not do that. The programmatic——

Mr. VENTO. Well, tell me this. Have you finished the archaeological surveys and work? Isn't it almost necessary as you are doing mining if you encounter something to then—you know, because

that is part of the process. You might uncover—I don't know what the nature of your mine was—gold or what?

Mr. MICSAK. Yes. It was a gold mine.

Mr. VENTO. But what I am told is that you signed an agreement and that you—once the—the permits—then you dismissed or you don't—you no longer had archaeological surveyors on-site?

Mr. MICSAK. No. That is not the case. The steps that we went through——

Mr. VENTO. You did not complete reports in the archaeological work? Do you have those reports with you so that you can give them to the committee?

Mr. MICSAK. I can make them available to the committee. They are——

Mr. VENTO. Are they complete?

Mr. MICSAK [continuing]. tens of thousands of pages long.

Mr. VENTO. Are they complete? Have they been completed? I don't know how many thousands of pages there are. Did you fulfill the programmatic agreement?

Mr. MICSAK. The programmatic agreement has several different components to it. The portions of the programmatic agreement that were required to be completed before construction could proceed have been completed. There are some parts of the work that we will be continuing on for several years because of the magnitude of the work called for under the terms of the programmatic agreement.

Mr. VENTO. Have you satisfied the BLM permits and fulfilled the requirements of the programmatic agreement in a timely way?

Mr. MICSAK. I am sorry.

Mr. VENTO. Have you fulfilled the requirements or the agreements that you made in a timely way with regards to BLM?

Mr. MICSAK. Yes, I believe we have.

Mr. VENTO. You believe you have?

Mr. MICSAK. Yes.

Mr. VENTO. Well, does BLM believe you have, that you know?

Mr. MICSAK. I believe that they do too. I don't mean to simplify it.

Mr. VENTO. Well, the information I have is that there—maybe a letter to BLM would be appropriate, Mr. Chairman, concerning that sense. You are using that as the example.

Mr. MICSAK. My point with this is that the process was very costly and absent private funding——

Mr. VENTO. Well, I have information that says that you refused to do archaeological surveys until BLM said they wouldn't give you the permit without them?

Mr. MICSAK. That is not true. We had been engaged with the State Historic Preservation Officer for several years; had devoted about $1 million to relocating several significant structures; had, as I mentioned during the course of my testimony, listed on the National Register the Independence Mine and Mill.

Mr. VENTO. Well, I know that you testified that you had this agreement or some agreement with the state or that you had got the state's permission but you hadn't known that you had to go through a permit process, and then that came up after the fact. That is what you testified to. But, you know——

Mr. MICSAK. Well, there are two different state issues there. One is the state mine permit, which I testified to. The other is the involvement of our company with the State Historic Preservation Officer and Office during the preproject——

Mr. VENTO. So there was an agreement on that. Is that what you are saying? You are testifying just to the state mining issue. It didn't read that way. Well, I think that this has to be clarified, Mr. Chairman, in terms of the, you know, accuracies. So if BLM agrees with you, it is fine.

Ms. Marzulla, I mean, we have got a lot of testimony in here concerning property rights. There have been literally thousands of cases that you pluck from this constitutional history—those that you wish to utilize.

But the fact is that there have been some cases—now, the cases that you cite here like the exterior-interior case, is that now being followed by the State Historic Preservation Office in Pennsylvania?

Ms. MARZULLA. Yes. We understand it is. I mean, that is my understanding at any rate.

Mr. VENTO. So, I mean, your suggestion that they are following these cases insofar as there is a demonstration of whether there is a property right or exceeding authority, can you cite any cases where a Court case came out in terms of this and is not being followed by the Act?

Ms. MARZULLA. I think I understand your question. The purpose of my testimony was to set forth the constitutional principles, the concerns of private property rights that would guide this committee.

Mr. VENTO. There is no amendment before us to amend the Constitution.

Ms. MARZULLA. Good. I am glad to hear that.

Mr. VENTO. Yes. That is what I say too. Except that I think that there is some testimony here I would suggest, Mr. Chairman, to change the meaning of what is in the Constitution through the law by using that. So, I mean, that is the real problem, and dilemma that I have is you think it is a good thing for private landowners to have information about the historic or cultural value of what is on their lands in terms of survey work that is done?

Ms. MARZULLA. I do. I don't think my testimony discusses that issue.

Mr. VENTO. No, it does not.

Ms. MARZULLA. Now, if you are asking me whether I believe Federal agents should be able to go out on private property without informing the property owner——

Mr. VENTO. I didn't ask you that question.

Ms. MARZULLA. Well, then I am not quite sure what you are asking.

Mr. VENTO. OK. Well, I asked you whether you thought it was good to have the information. I didn't ask you anything about the process of obtaining it.

Ms. MARZULLA. Yes, I do indeed.

Mr. VENTO. Oh. So your concern is that if Federal dollars are being allocated in this instance—the Federal Government in terms of spending these dollars—don't you think that we need this infor-

mation so that we know what we are doing in terms of cultural historic resource fabric?

Ms. MARZULLA. Yes, as long as that information is accumulated and collected in a way that conforms with constitutional requirements.

Mr. VENTO. Well, we are getting back to how we collect the information. Again, I didn't ask you how we collected it, and I think that as far as I know is we are under the Freedom of Information Act. That information isn't protected, is it?

Ms. MARZULLA. No, as far as I know.

Mr. VENTO. Anyone is available as far as I know. You know, if you were just asking that this information be made more widely available, I have no objection to that.

Ms. MARZULLA. Right.

Mr. VENTO. I think the suggestion is, Mr. Chairman, of course, that we ought not to be gathering the information, that we ought not to have the knowledge and the information to make these decisions. And I disagree with the witness if that is what her intention is, but she isn't answering that so maybe we have no disagreement.

Ms. MARZULLA. That is not my intent.

Mr. HANSEN. The time of the gentleman has expired. Thank you and thank you for your responses. Let me ask you this. Would you both kind of comment on how you think the Historic Preservation Act may be modified in your opinion if we want to make sure we protect private property rights which is a big goal of a lot of us? Do either of you have a suggestion to that?

Mr. MICSAK. Mr. Chairman, I think the real problem stems from a fairly simple component in Section 106 of the Act. If you read Section 101, 106, and 110 together, you see that Section 101 and Section 110 pretty clearly set out the requirement for the survey by the various Federal and state agencies. Section 106 makes no mention of a survey.

And what I think has happened is from the use of the word eligible properties in 106 has flowed this body of regulations through which all of the survey requirement has been, developed. And it is this survey requirement and all of the things attendant to the survey requirement that have generated all of these costs and all of these delays that so concern people like me and our association members.

And if I could do nothing else but convince this committee that reading out of 106 a survey requirement, which I don't believe is there in any event, we would do a great deal to streamline this process and bring it back to what I really think the original intention of the Act was.

And you know as well as I that when you get before Court an agency's interpretation of its own statutory mission is going to be given deference. And because of that, I think this word eligible has scared a lot of developers to challenge that provision.

And I don't think it is that difficult of a reading to see that 106 did not entail a private sector survey requirement on private lands. That is kind of my main point in terms of addressing this issue.

Mr. HANSEN. Do you want to say amen to that, or would you like to add to it?

Ms. MARZULLA. Well, yes, I do agree, and I don't know that I have anything more than what I have already said in my comments that I just made. I think I really emphasized the two points that we had and the two recommendations that we had.

Mr. HANSEN. You know, one of the things that I find a little repugnant that bothers me a lot with the Federal Government is this layer upon layer of regulation that always seems to be flying out of here. I would hope that there would be some kind of incentive which would encourage better stewardship of historic resources without another five layers of regulation backed up with 15 people doing it and filling out tons of forms. And I know that is kind of a nebulous thing.

Do either of you have any idea of what incentives we could give without standing up there and saying, "If you don't do it, we are going to tie up your land. We are going to put you in jail, or we are going to charge you big fines. We are going to make you run through all these hoops and fill out all these papers and do all this work"?

Ms. MARZULLA. Well, that was sort of my point about having the process be truly voluntary, particularly the eligibility determination which, as you know, can now be placed upon a piece of property whether the property owner agrees with it or not.

It seems to me that once the process is entirely voluntary and the property owner can opt out at anytime, you at least set in a motivational system which requires the Advisory Council to work in a more cooperative fashion. At least it sort of sets up the framework.

Mr. HANSEN. I think that is very positive. You know, our problem around here is many of our bills we leave to regulate or to determine the details. I guess the very few things that I ever agree with Ross Perot on is the devil is in the details. And we come up with sweeping generalities that are beautiful, but, "Don't bore me with the details," type of thing.

But the details are the things that pierce the heart of the guy on the ground, wherever it may be, and the county and the city, and they have to live with that. Sometimes we have to get a little more interested in how we implement many of the things that we do in law around here.

Mr. MICSAK. I agree.

Mr. HANSEN. But if you have any suggestions, we would be more than welcome to have them from you folks or anybody who is on the ground.

You know, I am one of the senior members of the Armed Services Committee, and sometimes I find more information going out and talking to a sergeant in the mud somewhere than I ever find out from a General in the Pentagon as he is picked up in his command car every day because one guy has to do it, and the other guy has to tell how to do it.

So I remember back in the Korean War when I was one of those guys on the ground, so to speak, and I always thought that I wished I knew what the fellows that had the stars on their shoulders were really doing.

Anyway, thank you so much for your testimony. We appreciate you being here. We know it is inconvenient for you to come. Thank

you for coming and putting up with Congress for a few minutes today. We do appreciate it.

Ms. MARZULLA. Thank you for the opportunity.

Mr. MICSAK. Mr. Chairman, could I make a comment to your inquiry?

Mr. HANSEN. Sure. We will give you another minute.

Mr. MICSAK. The one thing that is very important, and it seems to be prevailing here, is the concern that if the Federal Government is involved, something is going to be missed.

And what I would like to say is that in all the states, and I have worked in most of the states in the West and a number of states in the Midwest and in the East in my business—all the states have enacted in every instance I am aware of a state historic preservation law.

And you work closely with the local communities and the state people in identifying those resources that are important to them. These are, in most instances, things that are of particular local concern, and we have done that in our projects and answered their inquiries, answered their questions, answered their concerns.

And I think that to be overly concerned about the need for Federal oversight on each and every project is really to overstate the need for the Federal involvement. I reflect back on the comments made by the previous panel about, you know, I think it is appropriate to have Federal agencies and the Council play a kind of programmatic role.

But let us not fool ourselves. There are very few resources that rise to national significance. And most of the people in these towns and communities that we work in know what is important to them.

And we can come in and work with those communities, separate and distinct from this Federal law, and develop programs and address the resources that are important to them. And I don't think there is much risk there, and I don't think that there is much concern about significant things being missed at least so far as those communities are concerned.

And if there is a national issue, fine, let us identify that, but let us not let the tail wag the dog and drive a tremendous amount of resources into a wasted State basically, with the hope that maybe some small percentage of what we have spent our time and money surveying turns into something that may or may not be significant to a local community, let alone a national interest, which I, frankly, have never seen occur.

Mr. HANSEN. Appreciate that statement and appreciate you both being here. We will excuse you and go to the next panel. The third panel is Dr. Donna J. Seifert, Member of the Society of American Archeology, Society for Historical Archeology; Mr. Edward M. Norton, Jr., Vice President of Public Policy, National Trust for Historic Preservation; Ms. Loretta Neumann, Board of Directors, American Cultural Resources Association; Lieutenant Governor Cecil Antone, Gila River Indian Community, Keepers of the Treasures.

So if these folks would like to come up and take your places, we would appreciate it. If you folks who are standing in the back are comfortable there, more power to you. If you are not, you are welcome to come up and sit in the inner horseshoe here if that would

make you more comfortable. But if that is embarrassing to you, do whatever you want to do.

Thank you for coming. We appreciate you being here with us. Have we got everybody identified there? You know the rules. Congress tries to live by them, and, you know, people come here and they say, "Gee, I only get five minutes, and I came all the way from Timbuktu to be here."

You know, we have members of Congress that spend millions of dollars to come here. Finally they are elected. They are sworn in, and the first year they only get 30 seconds on the floor.

So I am not trying to minimize it, but I would appreciate it if you could stay within your time. The little lights will come on. It is like a traffic light. And if you just follow it, we will be all right. Donna Seifert, thank you for being here. We will start with you, and the time is yours.

STATEMENT OF DR. DONNA J. SEIFERT, MEMBER, SOCIETY FOR AMERICAN ARCHEOLOGY, SOCIETY FOR HISTORICAL ARCHEOLOGY

Ms. SEIFERT. Thank you, Mr. Chairman.

Mr. HANSEN. We would like you to all pull those mikes up just as close as you can. As they used to say in the Air Force, kiss it when you get in there, and we can all hear it then.

Ms. SEIFERT. Thank you for this opportunity to testify. The Society for American Archaeology and the Society for Historic Archaeology represent over 7,500 archaeologists in this country. Our members are dedicated to preservation, study, and interpretation of America's archaeological resources. And these resources record over 12,000 years of human history in North America.

And we are convinced that the Federal Historic Preservation program plays a major role in ensuring appropriate management of these valuable resources. I am here today on behalf of these two societies, and our members are anxious to contribute to any discussion on the reauthorization of the Advisory Council, to streamlining the 106 process, and the process of listing properties on the National Register.

I am a practicing historic archaeologist working in private business, and I am the immediate past President of the Society for Historic Archaeology and a member of the Governmental Affairs Committee of the Society for American Archaeology.

I work with the Section 106 process daily, and I do understand its strengths and its problems, and I also understand the importance of predictability in private business. And I must tell you that it is my experience that this process generally works very well on a case-by-case basis.

We have submitted written testimony for the record that outlines in detail our support for the reauthorization of the Advisory Council and the process of listing properties on the National Register so I would like to devote the time I have here to addressing some of our recommendations for streamlining the process that have been developed within our professional community.

I would like you to understand that we start from an understanding that archaeology does enjoy broad public support, and we know that addressing archaeological resources in the project plan-

ning stage is the best way to prevent construction stage delays, which are unacceptable to business, or site destruction which in certain cases is also unacceptable to the public.

Here are some of the recommendations that our professional community has developed, and I will present these in a rather simple form. There is more detail in the written testimony. First of all, we need to be sure that all participants in the process maintain firm deadlines so that schedules are predictable. This is essential.

We encourage development of programmatic treatments of resources to reduce the amount of project-by-project or case-by-case treatment. For agencies, we encourage them to seek the participation of interested parties as early in the process as possible. For Federal agencies and SHPOs, we encourage them to be sure that they accept the complementary responsibilities that are assigned to them under the law.

For all decisionmakers in the process, particularly those who are dealing specifically with the archaeological resources, it is important that they have adequate training experience, and we specifically recommend that agency and SHPO staff in these decisionmaking capacities do meet the Secretary of Interior's standards which are required for the consultants who also do this work.

We encourage everyone in working in this process to apply what has already been learned, and in this case, we certainly support commitment of resources to developing syntheses of data, which is clearly a problem. We sometimes act as if this is the first time we have seen an issue. We need to address that problem.

And we support the use of advisory panels particularly in major projects where over some review of data recovery proposals to ensure that we are getting good work done is a very important issue. This peer review on large projects also could be important on programmatic agreements where we take advantage of the talent that we have and the knowledge that has already been gathered.

We encourage focusing more energy on product rather than process, and I think we have already heard that today as well—looking for creative solutions that actually contribute to our understanding of the past and knowledge of the past rather than expertise in jumping through the hoops.

And, finally, we would like to see commitment of more time and money that is devoted to this process in getting information back to the public, the public that supports this process and deserves to know what important things we have learned about the past through the 106 process.

Concerning National Register listing, I would just like to note that all participants in the process need to take advantage of the guidances available for determining eligibility so that critical decision is applied to the process of determining eligibility, and encourage the consideration of all four criteria when evaluating archaeological resources.

We hope that these suggestions will be considered by your committee, and please be assured that our societies are continuing these discussions, and we would welcome opportunities to share our recommendations with the Advisory Council, the National Park Service, Federal agencies, SHPOs, and industry. Please do call on us if we can be of further assistance to you. Thank you.

[Prepared Statement of Ms. Donna J. Seifert, Ph.D., may be found at the end of hearing.]

Mr. HANSEN. Thank you; appreciate your testimony. Mr. Norton, if you would pull the mike over, we will turn to you, sir.

STATEMENT OF EDWARD M. NORTON, JR., VICE PRESIDENT FOR PUBLIC POLICY, NATIONAL TRUST FOR HISTORIC PRESERVATION

Mr. NORTON. Thank you, Mr. Chairman. It is a great pleasure to appear here to testify before you today on the Advisory Council amendments to—any amendments that might be necessary to Section 106 and the process for listing properties on the National Register.

We have submitted prepared testimony in which we strongly urge this committee and the Congress to reauthorize the Advisory Council on Historic Preservation. We think that the Advisory Council on Historic Preservation plays a critical and indispensable role in the Federal Historic Preservation program. Its essential function is to act as a referee, as a negotiator, and as a forum for resolving conflicts and giving citizens the opportunity to comment and to participate in protecting the historic resources in their community.

Certainly there have been problems with the implementation in individual cases as there have been in any Federal program; indeed, any governmental program. But we do not think that those problems warrant changes in the Act itself or in the role of the Advisory Council. And, in fact, we believe that the successes of the Advisory Council far, far outweigh the problems that have arisen in individual cases.

In our testimony, we cite several of those as examples of successes of the Advisory Council on Historic Preservation, and before I came this morning, I was actually in another context reminded of another one which is a policy which the Advisory Council on Historic Preservation, the National Trust, the Department of Housing and Urban Development prepared last year on affordable housing and historic preservation.

And I think it is a very good example—I would like to submit it and have it included in the record—of the Advisory Council's and the preservation community's flexibility in trying to ensure that historic preservation is carried out in a way that makes sense in the particular context of historic preservation and affordable housing.

And I think that if you will look at this, you will note in there a number of the examples of flexibility in that. For example, the principles of implementation include the emphasis on exterior treatments of buildings that will be used for affordable housing and that are on the National Register or otherwise eligible.

There is a strong emphasis on eliciting local views, a strong emphasis on consensus building, all of which are examples I think of the way the Advisory Council and the historic preservation community has tried to work very affirmatively and constructively in dealing with the problem of affordable housing and using our available stock, our available infrastructure to address this problem.

So I think if you will look on balance, we see in the big picture that, in fact, the process of the Advisory Council works very well, that its role as negotiator, consensus builder, conflict resolver, in fact, works very well, and that the problems that have arisen can be addressed by fine-tuning the regulations, which the Advisory Council and the preservation community is working to try to do.

And I think a number of useful suggestions have been made here today which we would strongly endorse by the National Park Service and by just recently Ms. Seifert. Those are the kind of things that we think can make the process more workable, and that they are better hammered out by the parties who have a direct interest in this and who work with it on a day-to-day basis.

With respect to the process of listing properties on the National Register, we think that this process works well. It is very much driven by individual property owners asking that their properties be listed. We would strongly oppose any notion of owner consent on the National Register, listing on the National Register determinations of eligibility, give no Federal control over land use or property use, and certainly they do not in any way affect the property rights of people.

One of the curious aspects I find of the testimony involving property rights is how there is little recognition—in fact, frequently never any recognition—of how historic preservation actually increases property rights and, most importantly, increases property values. All of the evidence in this—there is no single study which demonstrates that any form of historic preservation, certainly not listing on the National Register, in any way negatively affects property rights.

And, in fact, all the evidences, all the studies strongly show that historic preservation listing on the National Register by any standard of jobs, income, multiplier effect are strongly reinforced by restoration and historic preservation.

And so the notion that somehow that listing of particular piece of property on the National Register or declaring it eligible in some way adversely affects property rights is simply not in any way supported by the evidence. As you know, there is a provision for owner objection to listing on the National Register, and I think that that adequately covers any problems that might be presented.

So in conclusion, Mr. Chairman, we strongly support the Advisory Council and urge that it be reauthorized. And we find that the process for listing on the National Register actually works as Congress originally intended it to. Thank you very much.

[Prepared Statement of Mr. Edward M. Norton may be found at the end of hearing.]

Mr. HANSEN. Thank you; appreciate your testimony. Loretta Neumann, we will turn the time to you.

STATEMENT OF LORETTA NEUMANN, BOARD OF DIRECTORS, AMERICAN CULTURAL RESOURCES ASSOCIATION

Ms. NEUMANN. Thank you very much. I am representing the American Cultural Resources Association. It is a new organization of businesses. We are not primarily an advocacy organization. We are in the business of doing the cultural resources work for industry, as well as for government agencies at all levels.

And we are a variety of people too. We are not just archaeologists. We are historians, architectural historians, architects, landscape architects. It is a wide array of disciplines that are involved.

In preparing for the testimony today, I did contact our board, our members. We are on the Internet. We have an active list server. I have read personally now several hundred of the messages that have been over the past six months addressing the issues of Section 106, of the Council's revised regulations, of the National Register—the whole range of issues has come across my computer and for this hearing I read them.

I also talked to our board members, and I have quoted them deliberately in here so you can see that people actually working in these areas know that the process does work. We are not here to just come and protect an existing system because we like the agencies involved or the people or we are making money at it. We are here because it works, and it also protects resources.

By way of background, I myself have a long history with historic preservation, both personally and professionally. And I wanted to note on the property rights issue that my own home is within a historic district here in Washington, DC, that I helped get on the National Register and on the local list.

And I willingly subject my property to the restrictions under District law and any Federal actions that might occur. It protects me and it protects my neighbors. It protects our property values, and I appreciate the National Register.

And you mentioned about the devil being in the details. I was one of the ones working with this subcommittee and under Congressman Siberling for many years on those details when the Act was changed in 1976, 1980, and then later as a consultant in 1992.

I would note that if the devil is in the details, you have an angel that is hovering over you, and I watched wondering what the purpose of that is, but I am hoping it is giving us all good guidance today.

My written testimony addresses the three concerns that I understand that you have with the reauthorization of the Advisory Council, with the Section 106 process and also with the National Register. And we have some recommendations.

We do urge that the Advisory Council be reauthorized with a simple reauthorization. The amendments that were passed before came after a long time of consideration, and I think if there is going to be change, we need much more time than we have had to consider any new changes.

For the 106 process, I would like to note that I don't think it is an issue of layers of government so much as more like spokes on a wheel where there are different players, they have different roles, but they help keep that wheel together. If you take one of those spokes out, you weaken what that wheel is having to carry.

I don't want to just read this so I will go to what our recommendations are and the comments on the 106 process. I think from the standpoint of the people who work on these issues daily, as our organization members do, the need for consistency is critical, and that is why we can't just have the states run these programs, why we need the Advisory Council to play that leadership role, pro-

vide the kind of consistency we need, and we would urge them to do more.

Anything you can do to encourage them would be helped. We don't need a change in law to do that, but I think some nice prodding from you would be helpful. They do pay attention to the Congress. We also need more flexibility, such as through the use of programmatic agreements. They are establishing a worldwide web presence. Using technologies to get information out would do a great deal to make the process work better.

For the National Register of Historic Places, I want to point out that ACRA Secretary Mike Polk is the president of an archaeological firm in Ogden, Utah. We believes that the current system does work well. He doesn't feel that the process is quite as rosy with some of the agencies in Utah as the SHPO said, but he did cite the Department of Transportation in Utah as having an exceptionally fine program because they do follow the process and are willing to make it work.

Again, we feel that the issue of consistency is an extremely important one with determinations of eligibility and especially in cases like the Mount Shasta one you heard about. In that case, a determination was made at the State level with the agency involved—the Forest Service. It was overturned by the Keeper of the Register and changed—modified to reduce the area involved. It is a system that works. There are safety valves where people can let off steam.

We do not feel that there is a need for a change in the law in that respect, and we oppose H.R. 563 as a result. We feel it is both unnecessary and discriminatory to a category of resources. Remember that being on the Register does not necessarily mean you can't develop. It does not mean that your project can't go ahead. It just means that there will be careful planning when that project is done. And I end my written statement with a success story from the president of our organization, and I will close with that.

[Prepared Statement of Ms. Loretta Neumann may be found at the end of hearing.]

Mr. HANSEN. Thank you very much. Lieutenant Governor Cecil Antone, the floor is yours, sir.

STATEMENT OF LT. GOVERNOR CECIL ANTONE, GILA RIVER INDIAN COMMUNITY, KEEPERS OF THE TREASURES, CULTURAL COUNCIL OF AMERICAN INDIANS, ALASKA NATIVES AND NATIVE HAWAIIANS

Mr. ANTONE. Thank you. Good morning, Mr. Chairman.

Mr. HANSEN. If you would pull that mike up close to you if you would, I would appreciate it.

Mr. ANTONE. Thank you, Mr. Chairman. Good morning. Basically, this morning I want to at least express the views and concerns of the Keepers of the Treasures, a national organization of Indian tribes dealing with the efforts to preserve cultural ways and traditional ways of Indian people throughout this country.

We support the reauthorization of the Advisory Council on Historic Preservation. As you may or may not be aware, in the initial Historic Preservation Act when it was established didn't allow

tribes to be involved in those situations as far as the 106 process up until recently in 1992 when the amendments were made.

Then tribes became available and were a part of the process and in some situations have been delegated those responsibilities. And so, you know, as far as the Keepers of the Treasures organization, we wholeheartedly support the reauthorization of the Advisory Council.

And the area that tribes do get involved with Section 106 is very critical because in some situations, and I will take my community for example, we have done a lot of agreements with Federal agencies and one in particular with the Air Force base that we dealt with in Arizona, Williams Air Force Base—and where we became part of a Programmatic Agreement. And it worked out very well, and everyone seemed to be happy with the agreement.

But in reality, there are other things within the areas that we need to look at more considerably as far as this group, the Advisory Council. They have been involved in a lot of the consultation under situations where the State and the tribe could not agree on a certain property or what to do with that property as far as mitigation. But they are a group that provides that direction in cases where those situations do come about.

I guess as far as the questions you had indicated at least what we felt about the reauthorization of the Advisory Council, we support that, as I stated already. The Section 106 process, as I stated, is already in process as far as tribal involvement.

And, as I stated, there are some tribes that have gone through that route and have been delegated that responsibility, and I will take, for example, the Navajo nation. They have their own historic preservation program going, and there are other tribes that are in the process of doing that.

And also these agreements that I mentioned earlier, I think it is a good situation because prior to that there was really no say-so as far as tribes getting involved in some areas outside the community that are, you know, religious sites that are really important to tribes as far as protection and so forth. And I think as far as Federal lands, the agencies have been wholeheartedly trying to work out situations to help everyone.

Whatever happens as far as the other areas within the Federal rules and regulations such as the Native American Graves Protection Repatriation Act, that law in itself does lend to, you know, part of this discussion here because of the human remains element, because that sometimes comes about because of a sacred site or archaeological site, and usually one of the things that come up is human remains, and they all work hand in hand.

And I guess I will close in saying that I think the Advisory Council has done its part and only now tribes are being involved actively and have begun developing their own historic preservation programs. I think we do need additional resources, and I know the current appropriation is $2 million. And in order I think for tribes to develop their own programs, you are looking at maybe 5 to 7 million. Thank you.

[Prepared Statement of Mr. Cecil Antone may be found at the end of hearing.]

Mr. HANSEN. Thank you. We appreciate the testimony from all four of you. I am going to give myself five minutes to ask you some questions, and I am not going to direct them to anybody. Just jump in if you want to and keep your answer as brief as you can. I appreciate it.

You know, all historic properties aren't created equal. I mean, some people may think that, but it is just not the case. Some are more probably important than others, and, hence, we have properties listed on the National Register at the National, State, and local level. However, the law treats all 800,000 buildings, sites, and objects on the Register the same way. Does that make any sense, or how do we handle something like that? Anybody want to respond to that?

Ms. NEUMANN. Well, ultimately, as scientific as people would like to make this seem, there is more art to this than science. And you would really be hard-pressed on many cases to make the distinction between what is local and what is national.

I am involved in a project in South Pasadena, California, where the community is fighting to save the neighborhoods of six historic districts. Whether they are nationally significant or locally significant, the fact is that the Federal Highway Administration has a proposal to fund a huge extension of a freeway right through the heart of their community.

The triggering of the Federal law comes because they are either on or eligible for the National Register. I don't think the people of that community would like it very much if we said, "Oh, we are sorry. Your homes are not important enough to get the protection that the Act affords." So that is my response.

Ms. SEIFERT. There is another issue, and that is that there are four criteria that are considered when properties are determined eligible or listed. And in terms of treatment and effects, one must look at those criteria. And so there can be quite a range in treatments of a property depending under which criteria a property is eligible. So at that level, there certainly is a discrimination in what the appropriate treatment for a property is.

Mr. HANSEN. Well, you know, you could look at it and say should there be a difference in treatment between a developed and undeveloped place. For example, how about a cornfield where here in Virginia or somewhere that a Civil War battle was fought on, but it is still a cornfield? And compare that to some historic building here in Washington, DC, where some wonderful thing happened or somewhere such as that or Independence Hall or something like that. Isn't there a distinction there in terms of the impact of the listing on the Register of a developed versus an undeveloped property.

Ms. SEIFERT. Well, for one thing, I think you are probably making a distinction between an archaeological site and a historic building. It is often easier to understand or appreciate the significance of something that you can see. In the case of the cornfield, you may well have a preserved historic landscape.

In the case of a Civil War battlefield, it could be in consistent use since the time of the historic event. And, again, the question of treatment would vary depending on what the effect is and what criteria the property—under which criteria the property is eligible.

Mr. HANSEN. I admit that is a tough question because it is kind of like back to the beauty question. It is in the eye of the beholder. We have got 368 national parks. Some of them just think they are wonderful. Some people wouldn't go to them twice. Most of them I think are very wonderful and are things we should preserve—no question about it.

And contrary to what has been said by a lot of people in high positions, there is no park closing bill. But I know a lot of people have got a lot of mileage on saying there is. However, there isn't such a thing.

That is a tough question, and I don't know the answer to it, but it costs us a lot of money. And a lot of money goes out of here, and can you provide any suggestions to the committee of how we could reduce the cost of compliance within the law for the private sector, for example? Is there any way we can reduce the cost?

You know, there is a big push around here. We are trying to reduce costs. We are trying everywhere to reduce the size of the Federal Government and to bring down costs if we possibly can, at the same time not trying to sacrifice things that are very important to us. Anybody have a better idea than what comes out of here?

Contrary to popular belief, there is no monopoly of great thinking within the Beltway. Most of it comes from outside of the Beltway. No disrespect to anybody who works here in the Beltway, however.

Mr. NORTON. Well, let me take a crack at all of those, if you will. I certainly agree with you, Mr. Chairman, that certainly all cornfields are not created equal, not all historic buildings are created equal. I think it is frequently a difficult, sometimes subjective judgment.

Certainly, the cornfield at Antietam, because something very significant happened there, is something that probably deserves—certainly deserves a higher standard of protection than a cornfield that was ridden over on the way to a battle in some other place.

I think that we do need to certainly provide certainty in compliance with all regulatory or advisory or consultation programs that government at every level runs. We have tried to suggest several ways in which that could be accomplished specifically as it relates to historic preservation and the 106 process.

For example, in our testimony, we suggest that there really should be a consolidated review process that we should try to integrate the process of review under the National Environmental Policy Act, the NEPA process, and 106. And these things should not be strung seriatim end on end so that there is a long time for compliance. We certainly support the idea of having appropriate deadlines and agencies complying with those deadlines.

In response to a question you asked a little earlier, I think we also do need incentives. And we certainly have worked hard to try to create incentives in the Federal Historic Preservation program, both tax incentives and other kinds of incentives that will encourage people and particularly encourage the private sector to become involved in historic preservation.

Because in the final analysis, really the private sector is going to play really the critical role in preserving a wide range of these historic resources at the Federal, State, and local level.

Mr. HANSEN. I appreciate that, and I want you to know the committee is committed to historic preservation. We just have to figure out this question before—the devil is always in the details—how do we work out some of the details, how do we save some money, how do we work this out—a lot of things you get into.

The Civil War battlefield that was fought out here in Virginia or West Virginia or wherever it may be, you could drive by it, and, you know, there is a sign there. You go to Little Big Horn, and there is a lot more there where—Custer's last stand.

Why does one have more importance than the other? I don't know. But one thing about America, everyone gets his say, but not everyone gets his way. And eventually we have to do something about it, and it usually ends up in Congress.

Like this park thing always gets to me. I was meeting with some people recently who hike in the Grand Canyon on a very regular basis. They were very irritated because they didn't feel they could have a wilderness experience because they could look up and see a condensation trail from an airplane flying over.

Well, that is one of the ways we get to Los Angeles, or wherever it may be. As you folks who fly know, there are certain airways in the sky, and they are red and green, and they are yellow and blue, and people stay in those.

And he said, "How can I possibly have a wilderness experience? I am a professional man from New York, and my family spent two weeks in the Grand Canyon, and this stupid condensation trail goes over the top of me."

Well, now the people who were with me thought the guy—there was something wrong with him—a little whacko of some kind. But he was very, very serious about it. So I said, "Go ahead and file your lawsuit," which he was talking about. "The Park Service has got plenty of money." You can handle that, can't you, Katherine? "And be ready to do it."

So maybe that is an extreme example, but I am saying in these areas, there is a lot of difference of opinion. We have to mold those into legislation. We have to take it to the floor, and we have to live with it. You know the old saying, "Power gravitates to those who are willing to make decisions and to live with the results." And, unfortunately, we can't please everyone.

But I want you all to know and all of you who testified that your testimony today was excellent, very thought provoking. I just wish we had more time, and I wish we had more members here. But, as you know, today there are a dozen things going on. There is an Endangered Species Act hearing going on down the hall there which is creating a lot of attention.

There are a lot of things on the budget going on. Many members have called and said they apologize for not being here. We will take more time to read your testimony, and I hope each and every one of you will be amenable to the idea that if we can call you specifically to ask you a question, we would like to have that opportunity to do that. So with that, we again thank you, and we will dismiss this panel and thank all of you.

Mr. ANTONE. Mr. Chairman, could I just make one statement just one minute?

Mr. HANSEN. Sure.

Mr. ANTONE. All I want to say is that I think the ongoing consultation with Federal agencies and State agencies is very essential to keep this process going with tribes as I understand it. Because the more we dialog, the more involved we get, the better understanding of any mishaps in the future.

Mr. HANSEN. Thank you. I appreciate that.

[Statement of Mr. English follows:]

PREPARED STATEMENT OF HON. PHIL ENGLISH, A U.S. REPRESENTATIVE FROM PENNSYLVANIA

Mr. CHAIRMAN. and members of the Committee, thank you for providing me with this opportunity to offer my support for H.R. 3103 which reauthorizes the National Advisory Council on Historic Preservation.

The Council plays a vital role is supporting and encouraging local historic preservation. In my home State of Pennsylvania, the Council has been especially effective as a catalyst for and coordinator of community-based efforts to protect our cultural treasures. Enactment of H.R. 3103 ensures that our historical buildings and properties, our archaeological sites, and our cultural districts will be responsibly looked after and available for the enjoyment of future generations.

I think that many in Congress are unfamiliar with the service the Council performs. The Council's small size and limited budget clearly demonstrate its efficiency. Through the Section 106 Process, the Council provides flexible opportunities for resolution of disputes. Their efforts safeguard cultural treasures from unforeseen impact by overseeing the application of federal laws. Many people misinterpret this function. I want to stress that the Council administers a process; it does not prescribe an outcome. Nor does it inhibit economic growth. Quite the contrary. By preserving important cultural resources, the Council's actions do more than simply enrich our culture—they provide tangible economic benefits to our communities through the preservation of important local tourist attractions.

Importantly, the organization was designed to bring together a broad range of interests representing Federal, State, local, private and tribal interests. They decide policy issues, recommend actions to the heads of Federal agencies, participate in public discussions and consultation at the local level, and reports their findings and recommendations to Congress and the President. The Council has an outstanding reputation for the quality of their work and the caliber of their members.

In closing, I want to commend the Council's 30 years of diligent work. Its efforts have resulted in thousands of agreements being concluded. Its decisions have withstood the test of judicial review. Its legacy is one of opportunities seized, and communities bettered through hard work on the behalf of the public interest all levels. Without the Council, such agreements would not be in place to provide a sound framework for the careful consideration of historic properties and for the local communities' participation in the Federal decision-making process.

I urge the Committee to save historic preservation in America and adopt H.R. 3103. Thank you.

Mr. HANSEN. The next bill up for consideration is H.R. 563 introduced by Mr. Herger. This bill addresses the issues of listing sites on the National Register where there are no artifacts or other physical evidence of human activity. In particular, the bill addresses listing of Mount Shasta on the National Register. Now, we will wait just a moment while we kind of clear things out here.

Mr. Herger is known as probably one of the most outstanding Congressmen from California and thinks things through very well, and a man that we all have the utmost respect for. And it is a pleasure and an honor to have you here, Mr. Herger, and we will turn the time to you, sir.

STATEMENT OF HON. WALLY HERGER, A U.S. REPRESENTATIVE FROM CALIFORNIA

Mr. HERGER. Thank you very much, Mr. Chairman.

Mr. HANSEN. Could you pull the mike just a tiny bit closer please?

Mr. HERGER. I thank you for your very complimentary remarks. I also appreciate very much your holding this hearing on an issue that is crucially important to those of us in northern California particularly. Mr. Chairman, at 14,162 feet, Mount Shasta is the highest mountain in the Cascade Range and the second highest in the lower 48 States.

For over 150 years, Native and non-Natives have enjoyed the mountain and surrounding forests for their beauty, recreational value, natural resources, and a full array of multiple uses. This rich history nearly came to an end in 1994 when the Keeper of the National Register of Historic Places made an unprecedented attempt to designate the entire mountain above the 4,000 foot mark as a historic district.

The basis for this action was the mountain's cosmological and mythical value to Native Americans and other non-Native American groups. The proposal covered 235 square miles and over 1,000 parcels of private property.

It would have eliminated almost all of the multiple uses of the affected Forest Service land and severely limited private property use throughout the area. It would also have devastated the regional economy which was already suffering from a drastic decline in timber harvest due to the listing of the northern spotted owl.

The response of rural communities throughout northern California was immediate and overwhelming. Nine neighboring county boards of supervisors passed resolutions in strong opposition to the designation. The Northern California Supervisors Association representing 11 northern counties wrote the Keeper directly strongly opposing his actions.

In addition, hundreds in the Mount Shasta community attended town hall meetings, which I was present, to express their near unanimous voice in opposition to the proposed designation. The entire north State was enraged by what was widely viewed as an attempt at a massive land grab by an arrogant Washington bureaucracy.

Mr. Chairman, the citizens of northern California had every right to be outraged. The Keeper's decision was made on incomplete and arguably one-sided information. Interviews of Native Americans used to justify the designation demonstrated a strong prejudice against traditional forest management, recreation, and other multiple uses that have been staples to the region's economy.

Furthermore, field inventories dating back to the 1970's failed to produce any archaeological or other physical evidence of the mountain's significance to Native Americans. The only premise supporting the designation was the mountain's abstract cosmological and mythical qualities.

Nevertheless, the Keeper aggressively campaigned to designate the entire 14,000 foot mountain. Had he succeeded, the impact would have been catastrophic. The designation would have stripped the Forest Service of its discretion to manage its land for traditional multiple uses.

It would have also prevented the increased use of the mountain for skiing and other recreation. In short, it would have prohibited use of Federal land in the mountain's vicinity for any purpose other than site-specific worship.

The designation would have had an equally severe impact on private property owners. It would have jeopardized their access to roads, water delivery, sewers, federally insured bank loans, and other services, and improvements necessary for the use of their land. As a result, property values would have plummeted.

Mr. Chairman, Mount Shasta does not need more regulation. The present wilderness designation above the 8,000 foot level already protects the physical integrity of the mountain. Adding an historic designation to the site will move beyond what is reasonable to the detriment of multiple-use management and private property rights.

That is why I introduced H.R. 563. The purpose of this bill is to prevent the ill-advised historic designation of Mount Shasta and bring common sense back to the historic designation process. It requires that physical proof of significant human activity support any proposed historic designation and prevents the lockup of large tracks of land based solely on their cosmological or mythological qualities.

I urge the committee to move this bill quickly through the House, and I thank you. And, Mr. Chairman, in addition to my written remarks, I wish to submit for the record statements and materials prepared by Jerry White, Mayor of Mount Shasta, and Marsha Armstrong, Executive Director of the Siskiyou County Farm Bureau.

I would also like to submit for the record resolutions from nine county board of supervisors and a letter to the Keeper from the Northern California County Supervisors Association. Thank you.

Mr. HANSEN. Thank you, Mr. Herger. We appreciate your testimony. Always excellent, as usual. Did you want to join us on the dais?

Mr. HERGER. I would be very honored to.

Mr. HANSEN. I know you have got a Ways and Means problem, but if you could join us and hear some of the witnesses regarding your piece of legislation, it would probably be very beneficial.

Mr. HERGER. Thank you.

Mr. HANSEN. We will turn to the next panel. We are always grateful to have our friend, Mr. Gray Reynolds, Deputy Chief of the Forest Service, with us. Gray, would you like to come up? And, Katherine Stevenson, you are getting your share today, and we do appreciate you again coming to the witness table. Gray, how much do you need today? Gray is such an old hand at this I can——

Mr. REYNOLDS. I think five minutes is fine.

Mr. HANSEN. You can handle five minutes. Katherine, can you state it in five?

Ms. STEVENSON. Yes, sir.

Mr. HANSEN. OK. You both know the rules. On go the lights. Gray, it is up to you, sir. The floor is yours.

STATEMENT OF GRAY REYNOLDS, DEPUTY CHIEF, FOREST SERVICE

Mr. REYNOLDS. Thank you very much, Mr. Chairman and members of the subcommittee. I would like to summarize my remarks and submit my statement for the record. Thank you for the opportunity to discuss H.R. 563, a bill that would amend the National Historic Preservation Act to prohibit the inclusion of certain sites

on the National Register of Historic Places. The Administration opposes this bill.

H.R. 563 would amend the National Historic Preservation Act to provide that any unimproved or unmodified natural landscape feature which does not contain artifacts or other physical evidence of human activity that would have unique significance in the history or prehistory would not be eligible for inclusion on the National Register of Historic Places, included on the National Register of Historic Places, or considered to be a historic or prehistoric property or historic resource.

H.R. 563 also significantly provides that the Mount Shasta area in California could not be designated by any agency or authority of the United States as a historic district, historic site, or national monument, and any inconsistent prior designation would cease to have any force and effect.

This legislation could exclude from analysis and consideration many property sites and places that are important to this nation's heritage. There are a number of places with significant values that have little or no remaining evidence of human activity or artifacts associated with them. To preclude these areas or areas like them from consideration as historic properties would deprive the Nation of some of its most important heritage.

In addition, H.R. 563 would limit an important management tool that agencies use to recognize the public value of our nation's heritage. The bill would require agencies to conduct more extensive and intensive examinations of locations which other lines of evidence adequately suggest were historically important.

With this bill, historically important places could not be accorded official recognition on the National Register of Historic Places unless physical evidence of human activity could be found and regardless of public support for listing.

The National Historic Preservation Act and its implementing regulations have provided a good process for the Forest Service to evaluate and consider these properties, sites, and places. This process includes opportunities for participation by the public and a structure for resolving disputed issues. Our experience has been that the process allows consideration of all viewpoints.

Mount Shasta is culturally significant to numerous American Indian tribes and to many others. Ethnographic evidence indicates that Mount Shasta has been used for traditional cultural purposes for many years by American Indians.

Mount Shasta was found to be a significant base on its association with important American Indian events in history, particularly those involving traditional spiritual values. The importance of Mount Shasta for California Indians has continued since historic times. Traditional culture uses and gatherings still occur there.

In conclusion, Mr. Chairman, the Administration opposes H.R. 563. H.R. 563 would limit an important tool used to recognize the public value of our nation's heritage. This concludes my statement, Mr. Chairman. I would be happy to answer any questions that you or other members of the subcommittee may have.

Mr. HANSEN. Thank you very much. Katherine Stevenson, we will turn to you.

STATEMENT OF KATHERINE STEVENSON, ASSOCIATE DIRECTOR, CULTURAL RESOURCE STEWARDSHIP AND PARTNERSHIPS

Ms. STEVENSON. Thank you very much, Mr. Chairman. First, I would like to——

Mr. HANSEN. Pull that mike just a tad closer please.

Ms. STEVENSON. First, I would like to ask you to direct your New York businessman friend to the FAA if he is considering suit please. Secondly, and most important, I would like to submit my comments for the record, and I have a few remarks to make.

As Mr. Reynolds has said, the bill would prohibit the inclusion on the National Register of unimproved or unmodified natural landscape features that do not contain physical evidence of human activity. The National Park Service has very grave concerns considering the impact of this legislation on the ability of all citizens to recognize and honor historic properties significant to our collective heritage.

Enactment of this bill would effectively preclude designation on the National Register for many important traditional cultural places, historic battlefield, natural monuments, and exploration landmarks, rural historic districts, and sites of historic events that may have occurred on open land that contain no manmade features and few, if any, visible reminders.

For example, Big Bear Butte in South Dakota which is the place where the revered Cheyenne prophet Sweet Medicine learned from those in the mountain how the Cheyenne should live; Walker Pass, site of the pass between the wagon train from the East to California; Eby's Landing, a very significant landscape area in Washington State; Kitty Hawk; Plymouth Rock; Clark's Lookout which is the place where Lewis and Clark stopped in 1805 in Montana; and pivotal World War II skirmishes in the Pacific islands—all would be without designation. If H.R. 563 were to be enacted, these sites could not be recognized and honored by listing.

We are also particularly concerned that this enactment would place an inequitable burden directly on American Indian and Alaska Native tribes and Native Hawaiian organizations. For these groups, traditional cultural places, such as Mount Shasta, represent one of the most basic components of their history.

The ability to identify and recognize these sites under the programs of the National Historic Preservation Act has become increasingly important as more and more individuals and groups seek to reestablish links with their cultural heritage and traditional life ways.

Because Native Americans have lived in America longer than other groups, landscape features figure strongly in their traditions more often than in the traditions of many other groups here in the United States. As a result, Native American traditional places are often entirely natural, showing little or no sign of human use or modification.

The restrictions placed on designation would adversely affect Native Americans, Native Alaskans, Native Hawaiians, other Native Pacific islanders, battlefield preservationists, both from the Revolutionary War all the way through World War II, military enthu-

siasts and historians, rural property owners, rural conservation planners, and supporters of historic trails.

Section 2 would prohibit the specific designation of Mount Shasta as a historic property. The 1994 determination by the Keeper of the National Register that certain portions of the mountain were eligible was made at the request of the Forest Service to assist the Forest Service in complying with Section 106, which requires Federal agencies to consult—and I emphasize consult—in order to make informed decisions when they affect cultural resources.

The project, because of the open controversy surrounding its designation, demonstrates the suitability of the current public participation process. The National Register staff reviewed over four linear feet of documentation including ethnographic materials, oral histories, primary and secondary source materials, and hundreds of personal letters and petitions.

The Keeper personally examined the material and the site itself, and on August 31, 1994, published in the **Federal Register** an invitation for the public to submit comments. When the comment period ended, more than 2,500 additional letters and petitions were received. All of these were carefully reviewed and analyzed before a final determination was made.

While the evaluation was made more difficult because no visible manmade features could be identified with the traditional American Indian use of the site, the documentation clearly described the importance of this site to the traditional beliefs of local tribes regarding their culture and world view.

Mr. Chairman, I repeat, the National Park Service opposes both sections of H.R. 563 as demeaning the significance of traditional cultural properties to a wide range of the American public and, in particular, to American Indians, Native Hawaiians, and Native Alaskans. Thank you very much.

[Prepared Statement of Ms. Katherin H. Stevenson may be found at the end of hearing.]

Mr. HANSEN. Thank you. As is the custom of our committee, a member who is not on the committee but a member of Congress is allowed to sit on the dais and ask questions. So we will turn to Mr. Herger if he has questions for the witnesses.

Mr. HERGER. Again, I thank you very much, Mr. Chairman, for this hearing, and I thank our witnesses as well. Let me give a little bit of background of what has taken place in the Mount Shasta area. I think you might have heard the testimony that I gave.

There was an incredible uproar that is in this area. We are looking at an area that has very high unemployment. Some of the adjoining counties have had unemployment as high as 21 percent—like Trinity County just a couple counties over—because of the problem we have of even harvesting a very limited amount of timber.

We already have a wilderness area on the top of the mountain that has already been designated. And I guess the big concern and the reason why so overwhelmingly the community around in the Mount Shasta area—the county that Mount Shasta is in, Siskiyou County, and eight counties that are adjoining—why the elected officials of those areas came out almost unanimously—near in opposi-

tion to the proposal—is because of what this would do to the economy of the area.

And it wasn't just a certain area that we were talking about designating on the mountain, but the entire mountain itself. This is a mountain that you can see as far away as Sacramento—probably 150 miles or more away. And the repercussions again were incredible to this area. And the way it was being done was also offensive—the designation was attempted without even coming out and taking a tour of the mountain.

Now, finally the Keeper did come out—I want to thank him for that—after it looked like the designation was going to be made and the incredible uproar began in this community. But it just seems like we are doing one more layer of regulation on top of another that is just putting nails in a coffin of these communities that are already dying.

And I guess I would like to hear a comment that you might have, Mr. Reynolds, I appreciate your comments, but I have to tell you talking to members of the Forest Service that actually worked there—and I am not going to mention any names—but I can tell you your feeling that you are expressing are not unanimous by any part among those people. As a matter of fact, I would almost say that you are in the minority in your thinking I am not going to mention any names, but I have to believe you are aware of this concern that everybody has including the Forest Service. Any comment on this?

Mr. REYNOLDS. Well, our first responsibility is to implement the laws that we have—to legally implement the processes that we are required to go through. And many times I find that my positions are not held by a large percentage of people. But to the best of our ability, we have gone through the legal processes that we are required to do.

We did go to Court. There is a Judge's decision that upheld the Forest Service's initial decision but told us to go back and evaluate the historic values and develop an assessment on the impacts on that heritage.

That has been a very long procedure, and you, in particular, led hearings in 1993 that led to the Keeper to come out and relook at the designation from the area from 4,000 feet to 8,000 feet. And the determination after that field visit was that the area from 4,000 feet to 8,000 feet didn't have significant evidence of historic use. Now, that was part of this process that we have gone through.

We feel strongly that with the involvement of the local communities and the people from all sides of this issue that the Forest Service is in a position to complete the effects analysis and look at the proposal that we had before us to determine whether that could go forward with proper mitigation or not. We are committed to complete that decision process.

Mr. HERGER. Well, Mr. Reynolds, I want to thank you for your comment, and I really think you put your finger on it earlier in your answering of the question in that you are obligated to go by the laws of the land. I believe over the last 40 years or so we have come up with some laws that have so tied your hands, not just in this area, but in every area.

And, again, I have parts over all of eight national forests in the district that I represent, a number of very dedicated hard-working Forest Service employees that want to be able to do the right thing and yet are so hamstrung by all these laws that are so often conflicting with each other—really what I am attempting to do is to help you, and that is try to remove some of these layers, and try to bring some common sense, if you will, and some purpose to what we are doing.

I don't believe we really have that right now so I understand your position representing the Administration. What we are moving in what has been shown to be an extreme, extreme radical environmental direction that we have seen that you have to do what you are told to do. But I really believe this will help you and certainly help those that are out in the field. So I thank you.

Mr. REYNOLDS. Could I just respond to that last point?

Mr. HERGER. Certainly.

Mr. REYNOLDS. I think it is important, and I was not here for some of the earlier testimony, but we have worked very hard in this area as we have with a lot of areas in this consultation question, where there are so many different groups, different agencies, different authorities that we work with.

This is another area where we believe there can be significant reductions in the time efforts by standardizing the review processes which I believe get to the point you are making and can reduce the cost and inability to deal with timeframes right now.

Mr. HERGER. Thank you.

Mr. HANSEN. Thank you, Mr. Herger. Let me ask you this kind of for the record. Did the National Park Service Keeper of the Register first overrule the Forest Service recommendation that the listing be limited to the 8,000 foot level on the mountain and later change its mind with respect to that boundary?

Ms. STEVENSON. I believe that is correct. What happened was that we received additional information, and the Keeper of the National Register went on-site to evaluate the property—at that time himself—and came up with a determination that based on the additional documentation submitted both by the Forest Service and by other people that the 8,000 foot contour to the summit would be the correct decision to make in terms of eligibility.

Mr. HANSEN. And that was the basis for the change. Is that right?

Ms. STEVENSON. Yes, sir.

Mr. HANSEN. Gray, how would designation of Native American religious sites on the National Register impact your ability to carry out your mandate of multiple use that your agency has?

Mr. REYNOLDS. Well, I think the central point—and I want to clarify there hasn't been a recommendation that Mount Shasta be placed on that Register. We haven't made that recommendation.

But I think the key point to answer your question is that if we can identify these issues through the public involvement process in working with the other agents, we attempt to mitigate those impacts into various multiple-use responsibilities we have. And while that isn't a clean process, I don't know of another process that we can get through while the public—while there are so many issues out there.

I think the key is the public involvement and the consultation we have with the various issues to carefully define what the various issues are and how our multiple-use management can be adjusted to respect those various interests once they are carefully identified and mitigate the impacts.

Mr. HANSEN. Katherine, the National Preservation Act requires that you talk with affected private property owners during the process of listing a site on the National Register. That is right, isn't it?

Ms. STEVENSON. It requires in doing actual listing on the National Register that there be the agreement of the private property owner if it is a single property and a simple majority if there is a district listing on the National Register.

Mr. HANSEN. And that was done?

Ms. STEVENSON. In this case, because it is a determination of eligibility, what we were doing is advising the Forest Service about our opinion as to the eligibility of this property were it to be nominated. It was merely a Federal agency advising another Federal agency.

Mr. HANSEN. You commented that you had 2,500 comments in support of designation of Mount Shasta for the National Register. Is that right?

Ms. STEVENSON. No. There were approximately 2,500 comments, and I don't know the proportion of supporters to detractors.

Mr. HANSEN. How many supported it?

Ms. STEVENSON. I don't know.

Mr. HANSEN. Can you give us a breakdown of how many supported it and how many didn't?

Ms. STEVENSON. I would have to provide that for the record. I wasn't involved in this process personally so I don't have those numbers. I am sure they could be provided.

Mr. HANSEN. That would be helpful if you would, and I would appreciate it if you could subsequently get us that information. Mr. Herger, do you have any more questions for this group?

Mr. HERGER. No.

Mr. HANSEN. Well, thank you very much on this panel, and we will turn to the third panel.

Ms. STEVENSON. Excuse me. I am sorry, Mr. Chairman. Apparently we do have that information with us. There were during the 60 day comment period 2,534 letters received; 985 letters received supporting the determination and 1,549 opposing the determination.

Mr. HANSEN. Thank you. I appreciate those comments. Thank you both for being here. Our third panel is Mr. Floyd J. Buckskin, Chairman, Native Coalition for Cultural of Mount Shasta; Ms. Michelle Berditschevsky, Spokesperson, Mount Shasta Heritage Council; Mr. George Thackeray, Former County Supervisor; Mr. Frank Tallerico, Retired Superintendent of Schools. If you folks would like to come forward and sit down. I am going to declare a five-minute recess so just enjoy yourselves for five minutes. We have got some people we have got to talk to, and we are expecting votes. So just be calm. Thank you.

[Recess.]

Mr. DUNCAN. [presiding] We will start again. Mr. Hansen has a meeting he has to attend, and we are being joined here now by our friend, Mr. Herger, and this is the last panel on H.R. 563.

And panel number 3 consists of Mr. Floyd J. Buckskin who is Chairman of the Native Coalition for Cultural Restoration of Mount Shasta; Ms. Michelle Berditschevsky who is the Spokesperson for the Mount Shasta Heritage Council; Mr. George Thackeray who is the Former Siskiyou County Supervisor from Etna, California; and Mr. Frank Tallerico, Jr., who is the Retired Superintendent of Schools of Siskiyou County in Yreka, California.

And we are pleased to have all of you with us. And I suppose that since you are seated in that order, we will just go in that order. And, Mr. Buckskin, we will start with you please.

STATEMENT OF FLOYD BUCKSKIN, CHAIRMAN, NATIVE COALITION FOR CULTURAL RESTORATION OF MOUNT SHASTA

Mr. BUCKSKIN. Thank you for this opportunity to speak to you and present our views of Mount Shasta. Mount Shasta has been important to the Native people, and particularly the Pitt River tribe, as the cultural and spiritual place of significance to our people.

We were given the responsibility by our creator to protect the natural resources in the land and the water, and we exercised that right until 1850 when that right and that exercise of jurisdiction was interrupted by the United States Government. And now we have laws that recognize our rights and return some of our rights to exercise that obligation that we were given by our creator and also by this Congress.

And we feel that Mr. Herger's bill, H.R. 563, is a discriminatory bill against the Native people because it targets only the Native American people, Native American Indians, Native Hawaiians, and the Native Alaskans, and removes the ability to protect those places of cultural significance to us.

More than religious sites, there are places of gathering for natural resources—plants and animals and minerals—for the continuation and preservation of our culture. And so we oppose this bill. The Pitt River tribe opposes this bill. And we feel that it is contrary to the laws that Congress has passed upholding a trust responsibility between the Federal Government and the Native tribes all across this country which this bill would affect.

And we thank you for this opportunity, and I would like to also add that Mount Shasta is very important to me because I was brought up within the sight of Mount Shasta, and our people continue to work in this area. Logging is important to our people also.

The hazard of fire is important to our people too, and we would like to be able to continue our tribal culture that addresses these issues. And this bill would also impact those avenues. We have a cultural tradition that would remove some of the brush that creates this fire hazard.

Also in removing this brush, you will see that archaeological sites are under there because I have worked as an archaeologist with the Forest Service for many years and as a tribal cultural representative.

In many areas where there have been fires, archaeological sites appear as they will appear on Mount Shasta; one case being McBride Springs which is overgrown by acres of mansanita and snowbrush. In some of the others where brush was removed, the archaeological site extended beyond the known boundary. Thank you.

[Prepared Statement of Mr. Floyd J. Buckskin may be found at the end of hearing.]

Mr. DUNCAN. Thank you very much, Mr. Buckskin. And next we will hear from Ms. Berditschevsky.

STATEMENT OF MICHELLE BERDITSCHEVSKY, SPOKESPERSON, MOUNT SHASTA HERITAGE COUNCIL

Ms. BERDITSCHEVSKY. Well, it is an honor to be able to speak for many people who feel strongly about Mount Shasta and the historic preservation issues currently before the subcommittee, as the introduction of H.R. 563 threatens cultural values that are vital to a large number of people both Native American and Euro-American.

There are places on this earth that coincide with the basic need to experience sacredness, a deeper dimension, a kinship with all living beings, and symbolizing the sacred has been Mount Shasta's role since time immemorial to which longstanding Native American traditions attest.

Mount Shasta's significance is well documented. For Native Americans, it has been a center balancing the forces of the world by uniting the energies of heaven and earth. One can read this in the literature that documents the designation of Mount Shasta.

It is important to all the tribes around it—the Shasta, the Pitt River, Wintu, Karuk, Okwanuchu, and Modoc tribes and to tribes as far away as the Kickapoo in Oklahoma, and the Hopi in Arizona. Because typically the sites that are of mythological and ceremonial importance are left in their natural state, H.R. 563 particularly targets this category of historic property.

I just want to say a little bit about the constituency that supports the designation of Mount Shasta. There is widespread recognition among Native Americans, and dozens of tribes have participated in some way in the protection effort, and this is part of our testimony.

Also, nationally and internationally there is a strong constituency who value Mount Shasta's unique cultural and natural quality that links it with other sacred mountains of the world such as Mount Fuji, Kilimanjaro, the Himalayas. It is a mountain of world heritage site stature.

The support and loyalty that we have received in our efforts demonstrates that Americans value the protection of the Native American heritage and its continuance into the present and into the future, not just in museums, but in its living cultures which depend on the integrity, recognition, and protection of sites such as Mount Shasta.

And they depend on it just as much as or at least as much as any Baptist depends on his church because Mount Shasta is a kind of church. It is a church to the Native Americans whose tradition was that the creator was worshiped in places of natural pristineness.

The bill demonstrates a blatant disregard for Native American culture and rights. And it ignores the fact that leaving a place in its pristine state is a deliberate cultural act which had a lot of management associated with it. And this is documented in books that talk about traditional Native management of lands.

We feel that the Federal Government has a role to play particularly where minority rights are being infringed on. And in our area in northern California, there is a particularly brutal history against Native Americans, a history of genocide. It is the area of the Modoc Wars, and it is a place where if a Native American is brought to trial, often the venue has to be changed because it is so hard to find an impartial jury.

So in our area, I believe that the overwhelming opposition to the designation of Mount Shasta is part of this prejudice, and this is why we need the Federal Government to intervene and to play its role as a cultural agency under the National Register through the Park Service, through the Advisory Council on Historic Preservation—to intervene in areas where there is that kind of prejudice.

The National Historic Preservation Act is the only Act that presently protects sites such as Mount Shasta from just total disregard of Native American values. And part of the problem with our situation is that the historic preservation process was begun so late in the process.

There had been evidence on record for over 10 years that this mountain was significant to Native Americans, and yet the Forest Service and other local governments persisted in pushing through and awarding the permit creating high expectations among local people and ignoring.

And if it hadn't been for the Advisory Council on Historic Preservation, Native American issues would have been totally ignored in the process. And it wasn't until the ACHP was asked to comment that we began to have some kind of hearing for these values. So I see that my time is up, and I invite you to read the rest of my testimony.

[Prepared Statement of Ms. Michelle Berditschevsky may be found at the end of hearing.]

Mr. DUNCAN. Well, thank you very much, Ms. Berditschevsky. We will go next to Mr. Thackeray.

STATEMENT OF GEORGE THACKERAY, FORMER SISKIYOU COUNTY SUPERVISOR, ETNA, CALIFORNIA

Mr. THACKERAY. Thank you, Mr. Chairman. I appreciate deeply being here to testify, and if I could indulge your patience, sir, I would like to read my statement because it sets out a path which we feel had been followed which has not been concurrent with those things which ought to have been done.

As a Past Supervisor of Siskiyou County who served when most of this process was taking place, I can't help but reflect on the painful process that people of our county—all people must have been subjected to as a plan to build, to create, and develop whatever to pursue the American Dream.

When new rules and regulations are imposed, expenses go up, patience wears thin, and a feeling of helplessness overcomes one as he deals with Federal and State agencies. Certainly, there are oth-

ers who might be impacted, and a careful and thoughtful study of scientific data can and will prevail in the end. But when the data that is collected is based upon hearsay and contrived to achieve an end, it requires the utmost scrutiny to find the truth.

It is to this end that I come to testify, not only for Siskiyou County, but on file, as has been stated here by Congressman Herger, nine northern counties have taken a stand against listing Mount Shasta as a historical district.

It is only those who wish to lock up public lands from public use—wise or multiple use or religious purposes—that cause communities to crumble, families to fall apart, and a host of social ills that beset people who are affected by decisions made upon them over which they have no control.

The fire storm over some of the developments on Mount Shasta brought many concerns. And as each was addressed, however, new concerns were proposed during appeals process that lasted throughout 10 years. During this time, the communities surrounding the mountain became polarized on the subject with animosities running high most of the time.

When in 1991 it appeared that the final decision had been made to process the ski area, "Save Mount Shasta," a reputable group I might say, a coalition of environmentalists, appealed once again this time on behalf of local Native American groups who claimed that their spiritual values were not taken into account by the previous decision to open the area for development.

At this time, one might ask where were these people in 1978 at the earliest mention of the development? If the mountain was so central to their spiritual values, where were they in 1978? During the succeeding years when the appeals process dragged on forever, there was no mention of spiritual values by the Native Americans.

This does not mean that there was not some value there. The answer seems that the Native Americans were prompted by the environmental community to claim the mountain at the last minute as representing the soul of their beliefs once all other avenues had been exhausted.

Many people have questioned the motives involved in this issue since the area above the 8,000 feet in elevation already receives Federal protection as a wilderness area. Another question that has never been adequately explored is the connection by the Native Americans that they need protection to practice their spiritual beliefs. They have never been denied access to the mountain.

Ron Berryman, a local consultant, has been a student of local Indian cultures for over 40 years and has discovered and formally recorded many aboriginal sites in northern California. Until the "New Age" Native Americans began their ascendancy, aboriginal sites had evidence to prove their existence. Now, we are confronted with verbal histories that may be as ancient as last week and which are accepted as fact.

He continues, "Some Native Americans are outraged over the idea that a few tribal members bent on achieving notoriety or monetary gain can claim to represent the entire tribe. The irony of the situation is that many of the tribal leaders were not even consulted during the process and still resent the manner in which they were handled."

The National Historic Preservation Act for all intents and purposes of 1966 and purpose is good and is not questioned. It is when the Act is amended with scanty and misleading information that we become concerned.

First, let me say that I am not against any man or woman or child or tribe's religion. Let them worship how, where, or what they may. But when the mountain is designated for a religious purpose and is promulgated by special interest groups, we must question the motives of those who offered the amendment of October 1992.

Native Americans are first in line of defense for their rights as guaranteed by the government even that which now includes cosmological. The amendment, the test case for a certain group, has lasting effects on massive nationwide land use and activity control that should be amended.

A group calling itself the Waka Nunie Tuki Wuki Coalition has claimed that the entire mountain is sacred to them as a source of spiritual power and purification and should be preserved as a religious shrine. Stated a press release: "Mount Shasta's significance as a cultural and natural sanctuary is becoming a management priority."

Although the coalition includes a few descendants of mixed Native American heritage, including Shasta, it also includes non-Indian New Age spiritualists and environmentalist members of the Marble Mountain Audubon Society, the Sierra Club, the Mount Shasta Heritage Council, and "save Mt. Shasta" group.

If they wish to worship in or around or on top of the mountain, so be it, but not to the detriment of private property holders who live under State—I see my time is up, Mr. Chairman. I have just a little bit more. Could I indulge your patience, sir?

Mr. DUNCAN. Yes. Go ahead. Yes, sir.

Mr. THACKERAY. The extent of the eligibility is too—no—let me—sorry. If they wish—let me repeat just a bit. If they wish to worship in or around or on top of the mountain, so be it, but not to the detriment of private property rights.

In an October 12 of 1994 article in the Siskiyou Daily News, Siskiyou County Director Rick Barnum presented a draft letter for approval by the Board of Supervisors and stating, "True physical presence of occupancy must be demonstrated in order to achieve eligibility. The extent of the eligibility area is too vast and involves a substantial amount of land area where qualitative and ethnographic information does not exist. The number and extent of significant cultural sites are not reasonably proportionate to the extent of the area proposed to be eligible."

Barnum goes on to say that the known cultural sites are already provided—this is important, Mr. Chairman—protection under the National Policy Act, NEPA, and the California Environmental Quality Act which "serve to adequately address the cultural and historical resources, thereby making additional measures such as eligibility designation unnecessary and burdensome."

Given the logic to support this designation of Mount Shasta as a historic district seems entirely justified to clear the island of Manhattan of all European influence and return it to their rightful heirs. The Federal Government, of course, would be reimbursed $24 for their original investment.

With Mount Shasta at the 8,000 foot level now declared eligible for listing, what constitutes a religious experience? Should access to private lands within the watershed be restricted or denied? Can those who deem the mountain sacred find it in their heart to treat others with the same respect? Thank you, sir.

Mr. DUNCAN. Thank you very much, Mr. Thackeray. Mr. Tallerico.

STATEMENT OF FRANK TALLERICO, JR., RETIRED SUPERINTENDENT OF SCHOOLS, SISKIYOU COUNTY, YREKA, CALIFORNIA

Mr. TALLERICO. Thank you, Mr. Chairman and members of the subcommittee for this opportunity to testify on H.R. 563, legislation introduced by Congressman Herger to amend the National Historic Preservation Act.

From a historical standpoint, Mount Shasta has supported a major ski area since the late 1950's. This fact was acknowledged by the Rare I and Rare II hearings which created the Mount Shasta Wilderness Area in 1984. During this process, over 38,000 acres from approximately the 8,000 foot level to the summit was designated as wilderness.

With encouragement from then Senator Alan Cranston from California, 2,000 acres were also set aside or designated for multiple use. This multiple-use purpose was to reestablish skiing on the mountain. The original ski area was destroyed by an avalanche, and the permittee chose not to rebuild and returned to the permit to the United States Forest Service.

In an effort to reestablish skiing on Mount Shasta, and in keeping with the spirit of the designated facility or the designation facilitated by Senator Cranston, the U.S. Forest Service began shortly thereafter to solicit proposals for developing the multiple-use area of the mountain; in this case, skiing.

A permit was awarded to a developer to establish a ski area on the mountain. After many hearings and appeals spanning a period of well over 10 years, construction of the ski facility has still not commenced. The residents of Siskiyou County and other ski enthusiasts throughout California and other parts of our country are still waiting for that to happen.

In 1992, during the height of the protracted review of the proposed ski area, the National Historic Preservation Act was amended to allow for consideration of cosmological and mythological significance during the process for designation of historic districts.

This nebulous language, which could apply to the views of the mountain held by any one of a number of special interest groups, has had a nearly catastrophic impact not only on a new ski facility on Mount Shasta, but also on the economy of the city of Mount Shasta and the rights of private property owners surrounding the foot of the mountain.

Under the 1992 amendments, the U.S. Forest Service conducted a study of the eligibility of the mountain over and above the 8,000 foot level for eligibility as a national historic district. As a result of this study, the Keeper of the National Register of Historic Places designated the entire mountain above the 4,000 foot level as eligible for listing under the National Historic Preservation Act.

This not only jeopardized plans for the development of a ski area, but also encroached on the 1,048 parcels of private property totaling over 50,000 acres. Had the Keeper followed through with his original intentions, this property would have been, in effect, taken without just compensation in direct violation of the Fifth Amendment of the Constitution of the United States.

The area around Mount Shasta has been used by any number of people since humans first occupied the region. For the past 100 years or so, trapping, hunting, timbering, hiking, skiing, and other multiple-use activities has taken place on the mountain.

The 1992 revisions to the Historic Preservation Act have been used by a few who want to pursue their own uses of the mountain to the preclusion of the multiple uses that have legitimately become an important part of the history of the mountain.

Siskiyou County is an economically depressed area that has not realized the economic upturn that other areas of California or even this nation have enjoyed. The region is heavily dependent upon natural resources such as timber. In recent years, the economic base has eroded due to the listing of the northern spotted owl under the Endangered Species Act.

This has led to high unemployment and a significant number of children supported by Aid for Dependent Families. A large number of children in our schools receive free or reduced priced meals with the Meals for Needy Act. If our economic base continues to erode, the number of children requiring this assistance will continue to grow.

Mr. Chairman, I wish to submit statistics showing the number of children in Siskiyou County that receive Federal aid. If I may, sir, present that. The people of Siskiyou County have been told by Federal authorities that they need to diversify their economy. This is one of the instructions we received from the President's Option 9.

We have been told by Federal officials that we should focus on using the scenic beauty of the region to develop tourism and other industries that are less dependent upon our natural resources. Now we have been sent the clear signal that even this industry is in jeopardy because of the historical significance of Mount Shasta and its cosmological importance to a few special interest groups.

We do not need another layer of Federal bureaucracy to regulate our private property and the Federal land on which we depend for our livelihoods. Mount Shasta is already a designated wilderness above the 8,000 foot level.

It does not need to become a historic district as well. H.R. 563 will ensure that this will not happen. I ask the subcommittee to help the people of Siskiyou County by moving this bill very quickly through the House. Thank you, sir.

Mr. DUNCAN. Thank you very much, Mr. Tallerico, and I am going to yield my time on questions to Mr. Herger.

Mr. HERGER. Well, thank you, Mr. Chairman, and I want to thank each of our witnesses for coming the long journey from northern California to be with us here today. I would like to make a comment, if I could, on a comment that you made, Mr. Buckskin. I believe in your testimony you mention that you thought that this legislation was a discriminatory bill. I presume you are saying that

you feel it is discriminatory against Native Americans. Is that correct?

Mr. BUCKSKIN. Yes.

Mr. HERGER. I am very sorry that you feel that way. I can assure you that this is not the case, and I have for a number of years worked with the different tribes in our district on a number of different issues of which I am sure you and those that are with you can attest. And I just want to make it clear that I can't change how you may feel, but I can assure you that is not the case.

You mentioned in your comment I believe about the importance of logging. I work with a number of tribes that logging is important to them and they do it in a way that will preserve our environment and in a way that is environmentally safe, ensuring that they do not cut trees any faster than what they are growing, in a scientifically sound way so that our children and great-grandchildren and those that come after us will have what those who came before us had. So we share that.

But the reason for the bill—and let me just clarify that—then I want to maybe ask some questions—is that I see that the practices that your people had, of burning are no longer done. There is a reason why there is all the brush—the mansanita that is there now that wasn't before that your grandparents and great-grandparents didn't have—because they burned. Isn't that correct?

Mr. BUCKSKIN. Yes.

Mr. HERGER. You set fires there?

Mr. BUCKSKIN. Yes.

Mr. HERGER. Now, you and I both know what would happen if we set a fire there today.

Mr. BUCKSKIN. Oh, yes.

Mr. HERGER. Not just the brush would burn, but everything would burn because we have eliminated fire for 150 years or more, and we have these dense stands because we haven't been able to thin them as I believe we would both like to do. I don't want to put words in your mouth, but, now if you burn, everything burns, and that is our problem. That is one of our problems.

And, yet we have this proposed this designation—and I want to give you my commitment as I have before that I want to work with you on any of these sites that are the sensitive areas, that I want to work with you to protect them as well. My concern is not one of discriminating. My concern is the fact that we go in and designate not certain areas but the entire mountain.

And what that means, in effect, is that we no longer would we be able to go in and thin out these trees that have grown so dense, maybe two—two and a half times denser than they were prior to the 1850's, that create the fires that not only burn our forests and our trees, but burn our homes and burn all of nature and wildlife at the same time.

So I just want it clear that this is the reason, to help your children and your family to be able to have jobs, to be able to support ourselves in this area. We are being denied, that opportunity now because of the heavy hand of the Washington, bureaucracy. And I want you to know that that is the reason for this legislation; absolutely nothing to do with discriminating against anyone. Maybe

just the opposite; trying to makes it so that Washington doesn't discriminate against us.

And just on this note, Mr. Thackeray, you mention you were a supervisor representing this county during the years that this was coming about—I believe 12 years or so, weren't you, as a supervisor?

Mr. THACKERAY. Yes, sir.

Mr. HERGER. And have lived in this area most of your life. What would this do to the economy of this area—an economy that is already hurt? What are we talking about?

And you mentioned also that we already have laws, and I might mention my understanding is we already have legislation that would prevent us from going into areas that are sensitive areas right now. But what would it do to designate the entire mountain—again, not parts of it but this whole mountain as a historic landmark—economically to the community?

Mr. THACKERAY. Well, certainly, Congressman Herger, one aspect of the total economy of Siskiyou County—that is only one of them, but as we begin the process of locking up—if I can use that term—most all of the lands for a very restricted use, that is just one more spoke in the wheel that is incumbent upon the people to find something else to do, not only those who perhaps—Native Americans and others who have logged on the mountain, who have mined perhaps on the mountain, or done other things on the mountain—trapping and so forth.

All of these have a cumulative effect upon the economy of Siskiyou County, and so it is just one more spoke and one more issue that we need to address, and more rules and regulations which are placed upon the people not only of Siskiyou County but the entire West, and so those are the things that concern us, that all of them have a dramatic effect on the economy of Siskiyou County.

Mr. BUCKSKIN. I would also like to respond somewhat.

Mr. HERGER. Yes.

Mr. BUCKSKIN. The issue of the entire mountain was never I feel properly addressed about the issues of private lands and private property. Not once in our discussions was that brought up, but the tribe has always taken a position that we would not adversely impact private landowners in our efforts to recover ancestral lands, to protect ancestral lands. And so thank you.

Mr. HERGER. Well, I appreciate you saying that. You are saying—I don't want to put words in your mouth, but did you just say that it was not ever the intent of the tribe—and this was really my understanding as well——

Mr. BUCKSKIN. Yes.

Mr. HERGER [continuing]. To impact on private property? Is that correct?

Mr. BUCKSKIN. Yes.

Mr. HERGER. I will tell you the concern I have seen, Mr. Buckskin, and it was mentioned by Former Supervisor Thackeray and also our other witness. The fact is that what this has done—what we have done, in essence—is impacting these other property owners. We are making it where they cannot do anything even with their own land because of this eligibility designation.

So even though this has not been your intent, it is my observation that some within the extreme radical environmental community have come in and have turned this into a lock up and a land grab of this whole area. I find that tragic, and I find it is working against what I believe your intent is and what the intent of so many Native Americans that I have spoken with in our area is.

I really believe that if we could just sit down and work together, we could work this out as I believe we have done in the past. But with this other involvement, we see much more happening. I would like to just get to—Mr. Thackeray?

Mr. THACKERAY. I wanted to reiterate, Congressman Herger, that under the Forest Service practices, any cultural events, any sites, any inkling that there had been some activity by our friends, the Native Americans, they were protected. They couldn't proceed with any type of practice on the mountain unless those were consulted.

The county itself—we always had an archaeological study on any event that took place that was surrounding that 4,000 foot level. Nobody, nobody could have endangered or disregarded or desecrated any of those sites that may have appeared on that mountain.

So to say that we are preserving it in this manner so that they can be protected, they have already been protected, and they are being protected at this very moment.

Mr. BUCKSKIN. Also, we have worked with the Forest Service in clearing some of the logging activities and some of the other activities that the people have proposed and that they have done in the past. And we have reviewed those, and we have cleared those, and we have not opposed that. And we have addressed areas within those areas that protect those cultural sites, and then we will continue to do that.

Mr. HERGER. You know, again, this just brings out what you are saying, Mr. Buckskin. What I hear is that you are coming across in what I consider a very reasonable, good neighborly way—of all sides, working together in a reasonable manner. But I can tell you being a Representative of that area, now in my 10th year, that is not the way it has worked out.

You have seen what has happened to our mills that have been in that area. They have virtually all closed down—some 30 altogether, just in the last—three weeks 30th mills in northern California was shut because of not having enough product. And I would say that if this law continues as it has, that even more will be locked up.

The concern that I have is the way this was handled too. The strong-handed way that Washington came about bringing this ruling. I don't know if I could have just a little bit more time—thank you, Mr. Chairman.

But Mr. Thackeray, and I don't know if Mr. Tallerico would like to comment on this, but I think about—we had a decision that was made from Washington that was very different than what was being recommended from our local area. Is that correct? Would either of you want to comment on that?

Mr. THACKERAY. Would you repeat the question, Congressman?

Mr. HERGER. The recommendations that were being given from the local area versus the decision made in Washington—maybe a

little bit of the history of this. The Keeper finally did come out to a hearing we had. Did he change his mind? Just very quickly, what, was the background was on that?

Mr. THACKERAY. The original intent, Congressman Herger, was that the 8,000 foot level would be acceptable. As a matter of fact, it brought the supervisors on record of accepting that designation of 8,000 feet because recognizing it was already in the wilderness area and that it already contained a protection there. But if it wanted to be a religious shrine for people, they could sit back and worship, and I thought that was fine. And all of us on the board agreed to that.

It wasn't until the Keeper then with some additional information that had been funneled to him decided then that it ought to come down to the 4,000 foot level, and that is when we really became concerned because in his declaration there was no mention, and he even admitted himself that he did not know that there was over 1,000 parcels in that designated area at the 4,000 foot level and recognizing that there had already been a lot of impact over the last 100 years in that 4,000 foot level up to the 8,000 foot level.

And so it was then that we became concerned and asked you to intervene for us, and, of course, you had already received a letter from the Keeper stating the reasons that he was going to list it at 4,000 foot.

But a fire storm began once again, and the Keeper did come out and listened to the plea. And we had over 700 people to a public meeting who were listening to the Keeper, and it was at that point then and subsequent times that it was moved back up to the 8,000 foot level.

Mr. HERGER. Thank you for being very generous with the time, Mr. Chairman. Again, I want to thank each of you for being here.

Mr. DUNCAN. Thank you, Mr. Herger. Ms. Berditschevsky, you have raised your hand a couple of times so what did you want to say?

Ms. BERDITSCHEVSKY. Oh, thank you. Well, I want to say a lot of things, but one thing I do want to say is that I believe Mr. Herger disregards quite a bit of his constituency by agreeing with some of the local representatives who think that people who support Native American sites are just rabid environmentalists who want to lock up the land.

But one thing, we have heard this morning that historic preservation does not lock up the land. And I believe that there are a lot of people in Siskiyou County who don't agree with the policy that has been used against Native Americans to suppress Native American culture.

And we believe that the wilderness area does not really recognize Native American culture, and that it is not sufficient according to the documentation that has been presented about Mount Shasta to adequately reflect what is up there and its significance to Native Americans.

And I just want to read one little paragraph by a noted ethnographer, Dr. Lee Davis, who works with the advisory Council on California Indian Policy, and she says, "I cannot state strongly enough the unusual significance of Mount Shasta to northern and central California Indian tribes, people, beliefs, and practices.

"Mount Shasta is unique, one of a kind in ethnographic regions that comprise the northern two-thirds of California from the Oregon border to the Tehachapi Mountains. Not a tribe in northern or central California ignores Mount Shasta." And then she goes on to say the Maider and the Hoopa and the ohlone, and Yurok and many other tribes.

So this is a mountain of extraordinary significance, and to discount the fact that many people support the Native American heritage and to demean the support as being somehow of no value—I mean, these are people who have chosen to question the government's role with Native Americans. And, you know, we wish to have the government take a new direction in regard to Indian policy.

Mr. DUNCAN. All right. Thank you very much. Mr. Kennedy.

Mr. KENNEDY. Thank you, Mr. Chairman; appreciate the opportunity to ask a few questions. My feeling just in looking at the bill and hearing a lot from the sponsor about intent and the process and hearing out loud about how Washington overreaches itself sometimes in matters of local concern.

I am looking at the process here with respect to this legislation. And for one thing, the legislation does raise the level for standard of proof for historical areas as is contained in Section B of the legislation. It makes ineligible for consideration those areas that do not have tangible evidence of historical value; in other words, artifacts of that sort that have been left by Native American tribes.

And yet we have just heard from the testimony how it is part of the Native American ritual when preserving sacred sites not to leave these sites but in a pristine condition. So it seems to me this legislation is so blatantly—runs as an affront to the Native American cultures because it says we presume to protect your land that may be historical, but we ignore what you consider historical. That to me just seems so much a discriminatory measure at the outset. I think that is why Mr. Buckskin made that statement.

But in respect to Mount Shasta, the second area of process I think that this legislation takes is that it precludes Mount Shasta from even being considered as a historical landmark under existing rules. So you are having an exception to the existing legislation—the existing standards for bearing evidence at the same time as the legislation now changes the bar going forward.

So I understand how you are trying to change it going forward setting new standards but at the same time you are saying before we do that, we are not going to even let this other horse out of the barn, so to speak. We are going to shut the door for Mount Shasta even to be considered for historical designation.

I don't presume to know the concerns locally because this is not the area I represent. I just speak as someone who is interested in process here and making sure we have a just process. And it doesn't seem to me on the face of it that you have a preclusion from consideration at the outset of Mount Shasta from even being considered historical.

Maybe it won't suffice, but that will be at least Native American tribes that are in support of this being a sacred area will have an opportunity to demonstrate why it should be a sacred site. But they

don't even have an opportunity now if this bill passes to give their reasons for this being a sacred site.

And I don't presume that they should show us why it should be a sacred site. They ought to show those members of the Historical Commission that are in charge of designating this as a historical site the reasons for it being designated as such.

And maybe I could be further enlightened after this, but my final concern is even if this were to be considered a historical site, I don't see where it would preclude those development rights that have been talked about because another way this historical designation works is it sets up another process.

And that process allows Native Americans and other interested groups to discuss how any proposed changes would impinge upon their rights. It doesn't preclude them out of hand. It just allows them to stand at the table.

And so, again, you are perverting the process because you are precluding people from having an opportunity, if it is designated as a historical site, to saying whether this kind of development is good or that kind of development is good.

And that is my final concern because I think each step along the way here we are setting up a domino effect where Indian and Native American interests are going to get knocked over from one step to the next all the way to the end in a very unfair process as I see it. And this is the way I see this bill.

Mr. DUNCAN. All right. Well, thank you very much, and, of course, that is the purpose of this hearing, to make sure that everybody is heard from and that we have as fair a process as we can. Let me just ask one question.

I understand that this mountain is 14,100 feet high, and that the Forest Service recommended and the National Park Service later agreed with them that the designation of the National Register district should be only on or should be limited to the lands above 8,000 feet. Is that correct?

If that was done, if the designation was limited to the top 6,000 acres, Mr. Thackeray or Mr. Tallerico, would that satisfy your concerns, and would that also do you think protect Native American interests?

Mr. THACKERAY. Thank you, sir. One of the concerns that has been brought forth is the fact that once—and the 8,000 foot has been listed eligible by the Keeper. Once it has happened, then the view-shed within the 8,000 feet becomes affected.

As portrayed to the Board of Supervisors by Kathy Hammond who was then the Acting Forest Supervisor of the Mount Shasta District, stated that even if you are 23 miles away and you were doing something, whether it was smoke or vapor or whether it was a high-rise building or whatever the case may be, if that impacts the view of this cosmological situation on the 8,000 foot up, then it would have an impact. And, therefore, it would come under scrutiny from CEQA, the NEPA process, and also the Historical Act.

Rest assured that from a clear day you can see the Pacific Ocean from the top of Mount Shasta. You can see all points in between. And the concern that we have is that if the view-shed will be impacted up to the 8,000 foot level, then we have a problem with it. But if the 8,000 foot level is set as designated and nothing below

that that will be affected by that, then we don't have a problem with it.

Mr. DUNCAN. All right. Well, we need to move on to another bill, and so I want to thank each of you for coming here and for giving us your testimony today. Thank you very much.

[Prepared statements of Mr. Richardson and Ms. Dunn follow:]

PREPARED STATEMENT OF HON. BILL RICHARDSON, A U.S. REPRESENTATIVE FROM NEW MEXICO

Mr. CHAIRMAN, I appreciate your holding this oversight hearing on Historic Preservation. I Support Historic Preservation. The National Historic Preservation Act of 1966 has been a model of Federal-State partnerships. In the Past 30 years important aspects of our historic heritage have benefited from programs authorized by the Act. These programs have been carried out jointly with the States and have enlisted to help of numerous individuals and organizations across the country. I believe we are richer as a Nation because of these efforts.

I note we are also considering the reauthorization of the Advisory Council on Historic Preservation. I support the reauthorization. I think the Advisory Council has an important role in our Historic Preservation efforts.

I also want to add my support of the proposal before us for a Historic Preservation program for Historically Black Colleges and Universities. The house passed similar legislation last Congress, which I also supported, and I would like to see the Congress enact such legislation this year.

The subcommittee will also receive testimony this morning on H.R. 563 which if enacted would eliminate lands from being considered as Historic or eligible for listing on the National Register of Historic places unless these is clear evidence of Human use of the Land. I have serious concerns about what this bill would do to the chances of Native American sacred sites being considered for the register. Native American religion requires that sacred sites not be altered and be kept in pristine condition. This fact may preclude all Native American scared sites from ever being considered for historic preservation. Surely, No one Historic Heritage without including aspects of Native American culture.

This bill would also, I believe for the first time, prohibit a specific area, Mount Shasta in California, from even being considered as "Historic" under any Federal law. In order to support his bill, one must believe that there is some very special reason why Mount Shasta should not be considered for Historic designation. I hope to learn from the testimony today why Mount Shasta must be treated differently for I fear as the bill stands now, it would set a very dangerous precedent.

PREPARED STATEMENT OF HON. JENNIFER DUNN, A U.S. REPRESENTATIVE FROM WASHINGTON

Mr. CHAIRMAN, I want to thank you for holding this hearing to consider the budget request of the Advisory Council on Historic Preservation. I appreciate the opportunity to submit testimony sharing my past involvement and continued support of the Council.

I was appointed to the Advisory Council on Historic Preservation on July 26, 1985 by President Ronald Reagan. At the time, I was the Chairman of the Washington State Republican Party. I served as one of 4 public members of the Council until February of 1990. My duties as a Council Member included serving on the Awards Task Force and the Task Forces on Council Operations and the Budget.

The Council was created in 1966 and is composed of 19 members, including six cabinet members; four members of the general public appointed by the President; four Historic Preservation experts appointed by the President; the Architect of the Capitol; one governor, one mayor, the Chairman of the National Trust for Historic Preservation; and the president of the National Conference of the State Historic Preservation Officers.

The Council has two principal duties: to advise the President and the Congress on matters concerning the National Preservation program and to oversee the process devised by Congress, under Section 106 of the National Historic Preservation Act, to protect Historic properties from needless harm by Federal activities.

Mr. CHAIRMAN, local communities have a right to be heard. And despite Federal requirements for agencies and department to provide for public participation in their decisionmaking, that often occurs only in a limited way and for a limited audi-

ence. The Council's procedures and regulations exist to ensure that local communities have access to that information and an opportunity to voice their views.

Without the Council's diverse membership and its role in the Federal decisionmaking process, the special interest groups of all persuasions would have to great a voice in matters that effect the public's right to know about actions affecting Historic properties or sites in the communities. It is important to note that the Council is truly a Federal body and reports directly to both the Congress and the President.

The Council is specifically charged to educate and inform the public, agencies, States, local communities and Indian Tribes about how to take into account Historic properties as part of the public interest in decisionmaking. The Council administers a process; it does not prescribe an outcome.

I'd like to take a moment to speak to the section 106 process. Under section 106 of the National Historic Preservation Act, Federal agencies are required to take into account the effects of their undertakings (the building of Federal highways for example) on Historic properties and afford the Council a reasonable opportunity to comment on such undertakings. In establishing a process for compliance with section 106, the Council has combined these two responsibilities. So the rendering of Council comment is an intregal party of each agency's effort to take into account the effects of its undertakings.

This process involves 5 steps:
•Identify and evaluate historic properties
•Assess Effects
•Consultation
•Council Comment
•Proceed

If adverse effects on Historic property are likely as the result of a Federal agency's action, the agency enters into consultation with the State Historic Preservation Officer, the Council and when appropriate, other interested parties. This ensures that a reasonable effort is made to evaluate alternatives that could preserve the affected property.

During my tenure we rewrote the section 106 procedures to clarify definitions, streamline outdated processes, encourage public participation, flexibility for agencies in using the regulations, determine eligibility for the National Register of Historic Places, redefine the terms "effect" and "adverse effect", and a new section added for State/Council agreements and emergency situations, and making documentation requirements more flexible.

I found great value in the role of the Council as a mediator. Once we completed streamlining the 106 provisions, so that Federal projects could proceed in a timely fashion and yet provide adequate protection for valuable Historic places, the Council became a partner of Historic conservators and those who seek to provide adequate infrastructure throughout our Nation.

Mr. CHAIRMAN, knowing that you are introducing legislation to reauthorize the Council on Historic Preservation. I am pleased to have had this opportunity to share my support of the Council with you and the Members of your committee. I am confident that Executive Director Bob Bush will be happy to address the questions of the committee and that he will do the same fine job I have watched him perform since his appointment under President Reagan to provide you with all the necessary documentation your committee will need to make your decision.

Mr. DUNCAN. We are going to combine the two panels on that bill. We have Ms. Katherine Stevenson, who is the Associate Director of Cultural Resource Stewardship and Partnerships; the Honorable Bob Clement; Dr. Henry Ponder, President of Fisk University; Dr. Roland A. Harris who is the Executive Vice President and Chief Operating Officer of Knoxville College; and Mr. George Curry who is the Editor-in-Chief of Emerge Magazine.

STATEMENT OF HON. JOHN DUNCAN, A U.S. REPRESENTATIVE FROM TENNESSEE

Mr. DUNCAN. Let me say by way of introduction that I am pleased to be here today to discuss legislation that I have introduced along with my colleague from Tennessee, Representative Clement. I am especially proud of this bill, H.R. 1179, because it

benefits one of this nation's most important resources, our historically Black colleges and universities.

My family and I have been especially close to one historically Black college which is specifically mentioned in the bill, Knoxville College. My father, who many members of this committee served with, was a member of the Knoxville College Board of Trustees for many years, as was my mother.

The college has served the Knoxville community and a national constituency of distinguished alumni over the years, having produced well over one-half of the African-American teachers in the Knoxville public schools. In fact, Knoxville College has produced many of the elementary and secondary school teachers in Detroit, Michigan, Chicago, Birmingham, Chattanooga, and many other places.

Although in recent years the college has varied its curriculum in response to taking logical advances in American society and to differing career interests in the choices among the students. Knoxville College continues to serve a very much national constituency.

According to the United Negro College Fund's 1994 statistical report, the college enrolled 846 students. Almost ⅔ of that number came from outside of the State of Tennessee. In fact, while 245 of the students did call Tennessee home, the remaining 600 students came from other States, primarily Illinois, Florida, Indiana, Georgia, a particularly heavy contingent from Michigan, Alabama, Texas, Colorado, Ohio, and Missouri.

Although Knoxville College is relatively small, its student body is geographically diverse. Representatives from the college will describe the restoration project funded by this bill and the need for it. And there are several other colleges which will benefit from this bill also. I think 12 others.

However, I want to take just a few moments to tell you why I so personally and strongly support this legislation. I have told other members that I intended for all four years of my undergraduate education before coming to law school here in this city at George Washington—I did my undergraduate work at the University of Tennessee in Knoxville, a very large college with over 25,000 students.

At the time, I was a freshman in college, and I was extremely shy. And I have thought since that time that probably I would have been better off if I had gone to a smaller college.

And I have thought since then of how many young people there are who were very much like me and who would be much better off to attend their first year or two of college at a small college such as Knoxville College and such as the other institutions named in this legislation. And it would be a very sad day indeed for this country if some of these smaller Black universities and colleges go out of existence.

At the time when Federal resources are limited and the Congress has a major responsibility for setting Federal spending power, some of my colleagues could well ask why this and why now. My response would be that facilities at these institutions are critical to their ability to attract and educate the best students and is essential to enhancing our nationwide quality of education.

In the year 2000, a majority of our nation's work force will be comprised of minorities and women. If we want to ensure that these minority individuals are trained and educated to make the maximum contribution to American society, it is in our own self-interest to invest in the institutions which prepare them for tomorrow's technological, educational, and commercial challenges.

The list of African-Americans who have earned their academic spurs at historically Black institutions is a long listing, covers many fields of endeavor. Some of our most distinguished citizens have graduated from these schools including our former colleagues here in the House, the late Barbara Jordan and Kweisi Mfume who now heads up the NAACP.

In the field of law, there are many including Federal District Judges Constance Baker Motley, and Gabriel Kirk MacDonald, and the late Supreme Court Justice Thurgood Marshall. Additionally, some of the most celebrated athletes have come from the historically Black institutions including Jerry Rice, Walter Payton, Steven McNeer, Earl Monroe, the late Wilma Rudolph, and Edwin Moses.

Knoxville College is not without its distinguished alumni too. In fact, Mr. George Curry, the Editor and Publisher of Emerge Magazine is here with us today. Writing is a skill that the college emphasizes. Ralph Wiley graduated from Knoxville College and became a reporter and commentator for Sports Illustrated and has since authored two books.

Vernon Jarrod, who recently retired as a syndicated columnist with the Chicago Sun Times, also attended Knoxville College. My good friend, Bud Blakey, who is one of the most prominent lawyers here in the District of Columbia, attended Knoxville College—graduated from Knoxville College.

I will just simply end up by saying that this nation needs Black colleges and universities because they have produced and continue to produce the best and brightest in every field of endeavor.

The investment called for in this bill is a very wise one. Similar legislation passed the last Congress by a voice vote. This bill is a very much reduced version of that same bill, and I think it will receive widespread support in this Congress. And at this time, I would like to call on my colleague, Mr. Clement, for any comments he wishes to make.

[H.R. 1179 may be found at the end of hearing.]

STATEMENT OF HON. BOB CLEMENT, A U.S. REPRESENTATIVE FROM TENNESSEE;

Mr. CLEMENT. Well, Chairman Duncan and members of this committee, it is a pleasure to have the opportunity to say a few words on behalf of the historical Black colleges and universities in the United States.

I really liked what you said, and I agree with everything you said. And Chairman Duncan and I graduated together at the University of Tennessee. And just like Chairman Duncan, I considered going to a small college or university with that personalized attention.

And Chairman Duncan and I both know that as late as the 19th century and into the 20th century we had many of our minorities,

mostly African-Americans, that were barred from our colleges and universities in the United States.

And yet many colleges and universities, historically Black colleges and universities, were born and began to build and have grown over the years. And many of those dollars were private dollars, and they weren't public dollars. But because of those sweat and tears and because of all that hard work, the historically Black colleges and universities have continued to grow and prosper.

But you and I both know that in the future we are going to have more public-private ventures, and I think it is healthy for America to have public-private ventures. And what is wrong with having some government seed money, and that is what we are talking about in this proposal is some seed money in order for other great things to happen.

You know, when you walk on a campus, the first impression of a college or university campus, whether it be a large university or a small one, is the impression of the buildings. And if you have run-down buildings, if you have leaky buildings, if you have buildings that don't function, you have to fix everything. And it surely affects the private givings for the university.

I am a former college president of a small college in Tennessee, Cumberland University. And I remember walking on that campus the first time and seeing that campus and the grass was grown up, and the buildings were dilapidated, and it really affected me. And I said if I could make a difference, I am going to sure try. And that is exactly what Dr. Ponder, who I am introducing, has done at Fisk University. He totally turned around that campus. Fisk wouldn't even be in existence today if it hadn't been for Dr. Henry Ponder. And that is true of our other colleges and universities throughout the country now because of the leadership, because of the commitment, and because of the dedication.

You know, I introduced a bill in this last Congress, and just like Chairman Duncan said, it passed unanimously. We didn't have one negative vote about funding for the historically Black colleges and universities. It passed the House, it passed the Senate, and unfortunately we ran out of time, and, therefore, it didn't go anywhere, and we have reintroduced it.

And Chairman Duncan is now very much a part of being the sponsor of this legislation. The two of us are working it together, Democrat and Republican alike. And it was bipartisan last time, and we want to keep it bipartisan this time. And this legislation is going to be helpful for so many colleges and universities throughout the country.

I want to say something about Dr. Henry Ponder too. Dr. Ponder is leaving as President of Fisk University, and he is going to be the President at NAEOHE which is the President of the National Association for Equal Opportunity in Higher Education. And he will be representing 117 colleges and universities in this country. He was President at Fisk for 12 years, and he is sure going to be missed very, very much. He is still going to be very active at Fisk. He is going to help Fisk and all the other colleges and universities throughout the country.

We worked hard for this legislation, and we need a favorable vote in this committee whereby we can take it to the Appropria-

tions Committee because we are getting close on time, and we are running out of time. And I think we only have about 57 more days left in the 104th Congress. And, therefore, we sure need it on the fast track.

And if this committee can look favorably and we can move this on, we can do great things for our historically Black colleges and universities in this country that have been responsible for bringing about and keeping and retaining a strong middle class in America, and that is what has built this country.

That is the difference between this country and many other countries on the face of the earth—is having a strong middle class that we have in America. And part of that is because of the strength of the historically Black colleges and universities in the United States. Thank you, Chairman Duncan.

[Statement of Mr. Clement follows:]

PREPARED STATEMENT OF HON. BOB CLEMENT, A U.S. REPRESENTATIVE FROM TENNESSEE

Mr. CLEMENT. Mr. Chairman and members of the subcommittee:

Thank you for the opportunity to appear before you once again in support of legislation to authorize appropriations for the preservation and restoration of Historic buildings on the campuses of our nation's Historically Black Colleges and Universities.

I appeared before this distinguished subcommittee on September 21, 1993 in support of the a similar bill to preserve these historic buildings. The legislation passed the House and Senate but died during the waning hours of the 103rd Congress. We simply did not have enough time to work out minor differences between the House and Senate versions of the legislation. Thus, I have reintroduced the legislation as H.R. 1179 and respectfully request that you move expeditiously to approve this authorization legislation so that we may have an opportunity to submit our request for appropriations to the Interior Appropriations subcommittee in time to be included in the 1997 budget cycle.

As you know, our Historically Black Colleges and Universities have had a unique role in educating African-Americans. Unfortunately, the continuing legacy of racism in the mid-19th and early 20th centuries barred African-Americans from most opportunities for higher education.

As a result, Colleges and Universities devoted to educating African-Americans were established, mostly in the South, where the Majority of freed slaves remained after the civil war. Notwithstanding the creation of Land-Grant Colleges under the 1890 second Morrill Act, State and Federal Governments did not allocate sufficient land and financial resources to support these institutions. As a result, many of the schools came to rely on the generous support of private benefactors and charitable organizations. Many also came to rely on the sweat and tears of their own students and faculty.

Several of the witnesses whom you will hear from today will describe the buildings which this support has helped to build, as well as the Historic activities and individuals often associated with many of them.

It is the restoration and preservation of these important buildings, many of which are architectural masterpieces, that brings us before you today.

As a former College president, I have a keen appreciation of the importance of the physical plant which houses every institution of higher learning. More than anything, the quality of the buildings and the equipment used by students and faculty shape the academic environment in which learning, teaching and research occur. Drafty, leaky buildings are not conducive to the educational missions of Universities or any University of higher learning for, that matter.

And, as a former College president, I know the difficult financial needs these and other schools face in keeping tuition affordable and in simply meeting operating requirements. Regrettably, these schools are often financially strapped and unable to devote scarce resources to restoring their Historic buildings. At best, some are only able to apply band-aids in an effort to prevent further deterioration. But, as you know, Historic buildings are extremely expensive to maintain and preserve and the band-aids cannot heal or restore. Over any appreciable time, those temporary solu-

tions are ineffective and the delay caused by their use usually escalates the overall cost or restoration.

On the campus of Fisk University in Nashville, my home town, we are blessed with several buildings of enormous Historical and cultural importance. In fact, the campus as a whole has been designated a National Historic district by the Department of the Interior. One of the buildings, Jubilee Hall, was built with funds raised by the Jubilee singers, who toured the world and introduced the Negro spiritual not only to queen Victoria, but also to a wide international audience. Jubilee Hall is also the first permanent building constructed in the United States specifically for the purpose of educating African-Americans and has been designated a National Historic landmark.

The continued service of Jubilee Hall and the other Historic buildings on the Fisk campus is valuable in its own right. Their continued preservation is critical because they link our present with a rich, tumultuous and complex past. I am reminded of an inscription engraved on the granite exterior of the National Archives in Washington which says "The past is prologue." No phrase is perhaps more appropriate for the Fisk campus, where for 125 years we have celebrated the talents of those who have taught, studied, and had the vision to invest financially, spiritually and physically in this institution of higher learning for African-Americans.

For all of us, the historic buildings on these campuses are important symbols of the schools' past, present and promising future. Their restoration sends an important message nationally to members of all races that educational excellence is to be rewarded and not discouraged. By linking our rich history and culture with educational excellence, our country will retain its position of world leadership.

Thus, with broad bipartisan support I introduced H.R. 1179 last March. It is a modest bill designed to help our Historically Black Colleges and Universities repair and preserve the history represented by the buildings on their campuses.

H.R. 1179 authorizes $23 million in the first year, of which $5 million would be earmarked for Fisk University to restore the Administration building. Dr. Ponder will address this effort in greater detail, shortly.

H.R. 1179 also provides $8,000,000 for renovation of Elnathan Hall on the campus of Knoxville College, and $10 million for grants identified by a recent Department of the Interior's Historically Black Colleges and Universities Historic Preservation initiative. Eleven projects have been identified for assistance in the HBCU Historic Preservation initiative and the United Negro College Fund has agreed to match a departmental contribution of $10 million for the preservation of these structures.

Mr. Chairman, members of the subcommittee, these Historic buildings attest to the contribution Historically Black Colleges and Universities have made to the rich history of our nation. These structures and buildings are National Treasures worthy of preservation and restoration for future generations of All Americans. They are also valuable educational facilities for the students and faulty who occupy them.

Thank you, again, for the opportunity to testify. I respectfully request your favorable consideration of H.R. 1179.

Mr. DUNCAN. Well, thank you very much, Mr. Clement, and thank you for your outstanding work on this legislation. If our country is going to grow stronger as all of us want it to, we want our young people to have more choices, a wider variety of choices in their education and in their careers. And this is one way to try to help bring that about. We will just go right down——

Mr. CLEMENT. And, Chairman Duncan, I will submit my statement for the record.

Mr. DUNCAN. Your statement shall be placed in the record. And we will just go right down the line, and we will hear now from Dr. Henry Ponder who is with Fisk University. Dr. Ponder.

STATEMENT OF DR. HENRY PONDER, PRESIDENT, FISK UNIVERSITY

Mr. PONDER. Thank you, Chairman Duncan, distinguished members of Congress. It is a pleasure to again come before you to urge completion of a joint project that Fisk University has been pursuing with the help of Congress since 1989.

We were pleased in 1994 to welcome the inclusion of 11 other sister institutions selected through the UNCF/Department of the Interior initiative because of the similarity of their goals. We now also welcome the inclusion of Knoxville College because of their admirable objectives and severity of need. I, therefore, urge you to approve H.R. 1179.

Through various volunteer positions of leadership and service, I have had the opportunity to travel to most of our nation's historically Black colleges and universities. Many of our HBCUs were founded following the Civil War, especially those of the United Negro College Fund.

A substantial number of these campuses have buildings that date back to this period. I want to assure you that these buildings are treated with a great deal of reverence and respect because we realize what they symbolize and where they have come from.

These buildings stand as reminders of forbearers who recognized the importance of higher education and what a college education could do to help young people get ahead in this world. They stand too as reminders of those who were denied the opportunity for education but who worked to the limits of their ability to see that their children were allowed to go as far as their minds could take them. These historic buildings are extremely important to Americans.

They must be preserved because of what they stand for in the American history of African-Americans. They must also be preserved for the continued use of today's students and for the use of those that are coming behind us. Unlike living things, buildings can be restored to live on and serve many future generations. We must preserve our history while allowing it to serve our future.

Of the nine buildings at Fisk University listed on the National Register of Historic Places, one major building now remains which has not had significant restoration or renovation since its construction in 1931. This building, also at one time a library, now serves as the administration building.

It is an example of academic gothic-type architecture and very likely one of the last such buildings constructed in this style, with dramatic vaulted gothic arches, stone fireplaces, leaded glass windows, paneled walls and masonry ornamentation. Construction of this style building has been considered prohibitively expensive for many years.

The significance of the building is substantially enhanced by a series of murals painted by Harlem Renaissance artist Aaron Douglas who served on the Fisk University faculty for many years. Douglas murals also adorn the walls of the New York Public Library.

It is for the restoration of this extraordinary building that H.R. 1179 requests funding. Water seepage has done serious damage. Plumbing and electrical infrastructure is beyond repair, and architects advise that total restoration is the only solution to saving the building.

Over time, and in the buildings described, some of the most noted intellectuals in our country of all races have lectured or served on the Fisk University faculty. This year for the fifth consecutive year Money Magazine has selected Fisk University as one of the best values in all of U.S. higher education.

This, of course, reflects the fact that our tuition is deliberately kept to a modest $3,370 per semester. Such income does not allow us to create reserves for the restoration of historic buildings. More importantly, Fisk University's selection by Money Magazine speaks to the fact that Fisk University provides an education of the highest quality. Our original charter states that the University, and I quote, "shall measure itself by the highest standards not of Negro education, but of American education at its best."

This principle has guided Fisk University for the past 130 years. The completion of this historic restoration project will provide students, faculty, and staff with classrooms, laboratories, and offices that are not grandiose or luxurious but are highly utilitarian, clean, and in compliance with codes.

This is in keeping with the way we do things at Fisk University. We ask only that these historically and culturally significant structures remain in continuing service to the education of gifted young Americans.

Mr. Chairman and Members of Congress, we are sincerely grateful for the assistance that has been provided in the past and request that you permit our project to continue to completion by approving H.R. 1179. We are grateful as well for your consideration of this request. Thank you.

[Prepared Statement of Dr. Henry Ponder may be found at the end of hearing.]

Mr. DUNCAN. Thank you very much, Dr. Ponder, and next we will hear from Ms. Katherine Stevenson, the Associate Director for Cultural Resource Stewardship and Partnerships with the National Park Service. Ms. Stevenson.

STATEMENT OF KATHERINE STEVENSON, ASSOCIATE DIRECTOR, CULTURAL RESOURCE STEWARDSHIP AND PARTNERSHIPS

Ms. STEVENSON. Thank you, Mr. Chairman. May I submit my full notes for the record?

Mr. DUNCAN. Yes, ma'am.

Ms. STEVENSON. And, in addition, I have some remarks. The National Park Service has traditionally supported funding for historically Black Colleges and Universities. In fact, the Secretary of the Interior took the initiative to include funds for HBCUs under current authorities in 1996, and in the President's budget for 1997, there is $2 million identified.

The National Historic Preservation Act has the flexibility under existing authority for this type of special initiative. We are supportive of initiatives to provide assistance to preserve significant historic buildings on the campuses of HBCUs. However, we must oppose this bill and any other bill that seeks to earmark the Historic Preservation Fund for any purpose, no matter how worthy.

At the fiscal year 1996 funding level of $29.4 million to states, the Historic Preservation Fund is at its lowest in terms of buying power since 1980 due to Federal budget difficulties, which I know you are very familiar with. The limited funds must support grants to the States, to Indian tribes, and to the National Trust.

There are other equally worthy ethnically focused projects that must go unfunded all across the United States. Earmarking for this

or any other project no matter how worthy denies equal access to these funds by all worthy projects. If Congress wishes to set aside substantial amounts of money for HBCUs, perhaps it should consider a separate fund with a separate fund source. Thank you very much for your time.

[Prepared Statement of Ms. Katherine H. Stevenson may be found at the end of hearing.]

Mr. DUNCAN. Well, thank you very much. Next, we have Dr. Roland A. Harris who is the Executive Vice President and Chief Operating Officer for Knoxville College and who has done an outstanding job in that position. And I might say that Knoxville College through the years has brought almost every leading African-American in this nation into Knoxville College to speak or participate in some type of program.

Many, many famous people through the years have been in there to speak to the students and so forth. It has been a real asset to the city of Knoxville—the college has, and we are pleased to have Dr. Harris at this time. Dr. Harris.

STATEMENT OF DR. ROLAND A. HARRIS, EXECUTIVE VICE PRESIDENT & CHIEF OPERATING OFFICER, KNOXVILLE COLLEGE

Dr. HARRIS. Thank you. Thank you very much, Congressman. Mr. Chairman and members of the subcommittee, I am Roland A. Harris, as has been indicated, and Executive Vice President of Knoxville College, Chief Operating Officer.

I am a part of a management team of a four-person management team that is working to bring greater stability to Knoxville College. And I am appearing before you today on their behalf, as well as the behalf of the Board of Trustees, faculty and staff, and students of Knoxville College.

I want to thank Congressman Duncan for his unwavering and steadfast support throughout the years, and we can tell from his previous statements how dedicated he is to Knoxville College as was his father before him. And we certainly appreciate the Duncans for all of their help. Without the dedication and support of people like Mr. Duncan and his father, I don't believe that Knoxville College would have survived.

I want to make one thing clear with you today is that the real survival and future development of Knoxville College is the question before us today. Knoxville College and many other private and public historical Black Colleges and Universities face an uncertain future, a future which the committee has the capacity to influence greatly.

My friend, George Curry, who is sitting next to me, will say some things about Knoxville College next, and he will tell some personal stories and talk something of its illustrious past. What I want to say, however, focuses on the future of Knoxville College, the future of America, the future of tens of thousands of minority and poor youth across this great country.

They [HBCU's] have trained and contributed to producing trained and educated persons for the work force of the future. That work force, as we have been told for at least a decade now, will be

more than 50 percent minority and female. We have a simple choice. We can pay it now, or we can pay later.

We can as a nation choose to invest in institutions of higher learning that train and educate minority students for gainful employment and to become tax paying, productive citizens in tomorrow's technological and interdependent society, or we can pay the increasing costs of two American societies—one independent and tax paying and the other dependent and tax consuming. The latter cost in welfare payments and health care and prisons and so forth are growing, and we have to do everything we can to slow the tide of those kinds of expenditures.

And the question is always asked why Black colleges? Why do we need to have them when we have other colleges available? Well, one of the reasons for this is that the Black colleges show up as being although a small force and a small percentage of all America's colleges and universities, (only three percent), but we graduate nearly 20 percent of all Black baccalaureate recipients.

In addition to that, HBCUs also graduate an overwhelming majority of students who go on to graduate and professional schools. One example of this is in 1995 seven HBCUs were among the top 10 colleges and universities producing Black admittees to medical schools in America. And we could name them.

These were Spelman and Morehouse in Georgia, Howard University in this city, Xavier University in Louisiana, Hampton University in Virginia, Tougaloo College in Mississippi, and Talledega in Alabama.

The bottom line is simple. If Congress wants to get more efficiency and effectiveness for the money its spending and seeking better use of taxpayers' funds, then HBCUs are the place to invest in education of minority youth.

Equally important is the relationship between the investment and the bill before this committee. You have the opportunity—by acting favorably on H.R. 1179 which enjoys bipartisan sponsorship of Congressman John Duncan and Congressman Clement—to not only preserve a significant number of historic post-Civil War buildings on HBCU campuses, but also to enhance the living and learning environments of our students.

[Prepared statement of Dr. Harris follows:]

STATEMENT OF DR. ROLAND A. HARRIS

Knoxville College's plans for the renovation of Elnathan Hall represents an excellent example of the impact this legislation can have on HBCU campuses.

Elnathan Hall is one of five buildings on the Knoxville College campus which is on both the National Historic and the Tennessee Historical Commission Register of historic places. The Tennessee historical Commission has already granted the College $50,000 to complete a restoration feasibility study and repair the roof pending receipt of funds to completely restore Elnathan Hall as a living-learning center. We anticipate its use primarily as an "Honors Dormitory" with seminar rooms, with full individual student personal computer capacity, and a scholar-in-residence living facility for visiting professors and lecturers at the College. The restored facility also will serve as the College's Academic Development center and will also be available to the community for meetings. Later, we hope to house the College's main frame and other computer facilities on the lower floor.

Elnathan Hall is in its third reincarnation on the Knoxville College campus—having twice been previously destroyed by fire (in 1894 and 1896). The current structure was built in 1898, altered in 1905 and again in 1971. It has previously served as the freshman women's dormitory, campus dining facility, and multi-purpose facility. The 128 foot long x 40 foot wide three-story, brick structure sits on the front

portal of the campus "on Longstreet Hill" overlooking the city of Knoxville. The College expects to outfit the building for student and faculty use through private contributions, from corporations, alumni, and friends of the College. The University of Tennessee, College of architecture and planning has already contributed to the development of preliminary structural assessments and restoration plans. The community, the public and private sectors in Knoxville, and the Knoxville College family are also prepared to do their part. Federal support is critical to the realization of our dream.

We hope you, Mr. Chairman and the members of this subcommittee, will support us in this endeavor. I would be more than happy to respond to any questions you or your colleagues may have.

Mr. DUNCAN. Thank you very much, Dr. Harris. And next we will go to Mr. George Curry, the Publisher of Emerge Magazine. Mr. Curry.

STATEMENT OF GEORGE CURRY, EDITOR-IN-CHIEF, EMERGE MAGAZINE

Mr. CURRY. Thank you, Mr. Chairman. First of all, I want to personally thank you for your earlier comments in support of my alma mater. I feel I have bettered myself, and maybe you should have been enrolled at Knoxville College. It is an honor to be here today. I have got to tell you it is a strange one because I am a reporter, and I am accustomed to sitting at that table over there so this is the first time I have come before you as a witness.

It is an honor to be here, to come to Dr. Roland Harris, and I was asked by my alma mater to appear on its behalf. But in truth, I am appearing on behalf of thousands of students, both former and present, who like me, owe their very success to Knoxville College.

I have been extremely blessed after walking out of the doors of Knoxville College in 1970. I immediately got a job as a reporter for Sports Illustrated Magazine where I worked for two years. I was a reporter for the St. Louis Post Dispatch for 11 years and was employed by the Chicago Tribune working mostly in its Washington bureau and serving as the New York Bureau Chief.

For the last three years, I have been Editor-in-Chief of Emerge Magazine, a monthly African-American oriented news magazine. In 25 years, I have covered Congress. I have covered the White House, presidential and vice presidential campaign.

I have visited with the Pope at the Vatican. I have appeared on the Today Show, Nightline, ABC Evening News with Peter Jennings, CNN, C-SPAN, CNBC, and I appear every week on Lead Story, a news analysis program on Black Entertainment Television. I have written two books and am about to begin a third one.

And I say that to say that I feel that none of these accomplishments would have been possible were it not for the training, direction, and encouragement I received from my parents, from Druett High School in Tuscaloosa, Alabama, and particularly from Knoxville College where I grew into adulthood.

When I enrolled at Knoxville, I was a kid fresh out of a housing project. None of my immediate family had gone to College; in fact, hadn't even finished high school. My family never made $5,000 a year. And Knoxville College is the kind of place that specialized in preparing students like me to be successful in the larger world.

As a student, I was editor of my campus school paper. I was quarterback and co-captain of the football team. And I was one of the first students to serve as a representative on the Board of

Trustees. In fact, I was recently asked to join the Board of Trustees, and I am going to do that beginning this fall.

There is something special that grows on you if you are going through the doors of Knoxville College, and perhaps it is the recognition that it is a critical time in our life. I know that is the case with me. There were people at Knoxville College who believed in me more than I believed in myself, and they made sure we got a solid foundation, an excellent education, and the dedicated faculty and administrators saw to it that we would realize our full potential.

So it should come as no surprise to you then that I certainly would appreciate and do appreciate the support for H.R. 1179 and any other legislation that would enhance historical Black Colleges and universities. I, like many of you, Mr. Chairman, can think of no greater investment than to invest in our youth. Thank you for your time. Thank you for your invitation. I would be happy to address any question you might have.

Mr. DUNCAN. Well, thank you very much, Mr. Curry. That was a wonderful statement, and I wish everybody could have heard that. You know, this is relatively small legislation involving $23 million in a government that in this next fiscal year will spend more than $1.6 trillion.

So in that respect, I guess some people could describe it in different ways—small potatoes and other ways. But it is legislation that could be very big and very important to the schools involved. And I believe that yours and Dr. Harris's and Dr. Ponder's testimony has pointed that out very adequately.

The Chairman of this subcommittee, and I am now the ranking member—the second ranking member, but the Chairman of this subcommittee, Mr. Hansen, who is one of the most respected members of this Congress, has indicated to me his full and strong support for this legislation.

And we have tentatively scheduled it for markup on April 18, and hopefully we can move it through the process and try to bring this to fruition. I can assure you that the intentions and the motives of everybody involved in this are honorable. We are trying to help some young people who certainly deserve and need some assistance.

And so I am not going to delay you further because I know that all of you are extremely busy, but I thank you for being here today and for participating in this hearing. Thank you very much. That will conclude this hearing.

[Whereupon, the subcommittee was adjourned.]

I

104TH CONGRESS
2D SESSION

H. R. 3031

To amend the Act of October 15, 1966 (80 Stat. 915), as amended, establishing a program for the preservation of additional historic property throughout the Nation, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

MARCH 6, 1996

Mr. HANSEN introduced the following bill; which was referred to the Committee on Resources

---

A BILL

To amend the Act of October 15, 1966 (80 Stat. 915), as amended, establishing a program for the preservation of additional historic property throughout the Nation, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Act of October 15, 1966 (80 Stat. 915), as amended (16 U.S.C. section 470 et seq.) is further amended as follows: (a) Section 212(a) is amended by deleting the last sentence and inserting in lieu thereof the sentence

"There are authorized to be appropriated not to exceed $5,000,000 in each fiscal year 1997 through 2002.".

Advisory Council On Historic Preservation

The Old Post Office Building
1100 Pennsylvania Avenue, NW. #809
Washington, DC 20004

Statement of Cathryn Buford Slater
Chairman, Advisory Council on Historic Preservation
Before the Subcommittee on National Parks, Forests, and Lands,
Committee on Resources
U.S. House of Representatives

March 20, 1996

I am Cathryn Slater, Chairman of the Advisory Council on Historic Preservation. As you perhaps know, I also serve as the Arkansas State Historic Preservation Officer. I know first hand what historic preservation has meant to the citizens in my State, and I have come to have a larger appreciation for the importance of the Federal government's leadership and assistance in historic preservation through my work with the Council.

I am pleased to support H.R. 3031 to reauthorize the Council. The Council appreciates your introduction of this legislation, which is essential to continue the good works of the Council into the future. As the Council noted its report to you last fall, we are convinced that the basic statutory framework of Section 106 and the National Historic Preservation Act is sound. That is not to say that its administration cannot be improved; it can be and it must be. The Act provides us with the authority and direction to solve current challenges through the administrative process. We are currently engaged in doing just that and welcome the Committee's interest in our effort. With your support through enactment of H.R. 3031, we can achieve our shared goal of improving the National Historic Preservation Program.

You have asked us to consider three specific issues: the role, function, and need for reauthorizing the Council; ways to streamline the Section 106 process; and ways to streamline the process for listing properties on the National Register of Historic Places. Before turning to these, I would like to examine what I believe is the value of the national program and the government's commitment.

The Value of Historic Preservation and the Government Role in It

Today, like the American culture that it mirrors, historic preservation is perhaps best defined by its diversity. Within the past generation, historic preservation has evolved from a limited, and somewhat insular, pursuit into a broad-based popular movement. The reasons for this support are varied: a desire for a tangible sense of permanence and community; a wish to experience America's heritage in a direct and personal way; or a recognition that historic preservation can contribute to economic success. At the same time, many Americans see preservation of historic properties as a way to improve their quality of life and the environment in which they live and work.

Because of such highly personal responses, public support for historic preservation has flowed from the bottom up, making it, in the truest sense, a grassroots movement rather than simply a government program. The Congress recognized this in the National Historic Preservation Act of 1966, which found that

... . .the historical and cultural foundations of the Nation should be preserved as a living part of our community life and development in order to give a sense of orientation to the American people.... the preservation of this irreplaceable heritage is in the public interest so that its vital legacy of cultural, educational, esthetic, inspirational, economic, and energy benefits will be maintained and enriched for future generations of Americans....

While the Congress recognized that national goals for historic preservation could best be achieved by supporting the drive, enthusiasm, and wishes of local citizens and communities, it understood that the Federal Government must set an example through enlightened policies and practices.

Thus, through the substantive provisions of the Act, Congress made the Federal Government a full partner and a leader in historic preservation. In the words of the Act, the Federal Government's role would be to "*provide leadership*" for preservation, "*contribute to*" and "*give maximum encouragement*" to preservation, and *"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*." Indeed, an underlying motivation in passage of the Act was to transform the Federal Government from an agent of indifference, frequently responsible for needless loss of historic resources, to a facilitator, an agent of thoughtful change, and a responsible steward of our heritage for future generations.

For the historic preservation movement, passage of the 1966 Act was a watershed event. It marked a fundamental shift in how Americans--and the Federal Government--regarded the role of historic preservation in modern life. Since 1966, our definition of historic properties has evolved to encompass a much broader interpretation of American heritage, one that

acknowledges significance at the local level. Further, historic properties are now understood and appreciated as part of--not isolated from--the landscape in which they belong. It follows that with this more inclusive view of what historic properties are, and how Americans relate to them, the challenges presented by their preservation and treatment have grown more complex and sophisticated.

The Preservation Partnership and Section 106

To achieve this vision, the 1966 Act built a partnership between the Federal Government and the States, seeking to capitalize on the strengths of each.

- The Federal Government, led by the **Department of the Interior**, would provide **funding assistance**, the **basic technical standards, knowledge, and tools**, and a **broad national perspective on America's heritage.**

- The States, through **State Historic Preservation Officers** appointed by each Governor, would provide **matching funds** and a **statewide preservation program** to support and promote State and local historic preservation interests and priorities.

- The **National Trust for Historic Preservation**, a nationwide non-profit organization chartered by Congress in 1949, would help to **stimulate and focus public interest and involvement** in the national program and promote recognition of **historic preservation's importance in communities** throughout the Nation.

The drafters of the Act, however, also appreciated that transforming the role of the Federal Government would require a new ethic throughout all levels and agencies of the Federal Government. Two features of the Act were critical to this transformation.

- The **Advisory Council on Historic Preservation**, the only Federal entity created **solely to address historic preservation issues**, was established as an independent cabinet-level body to ensure that private citizens and their elected representatives would have a **forum for influencing Federal policy, programs, and decisions** as they impacted historic properties and the values they embody.

- **Section 106** of the Act granted **legal status to historic preservation in Federal planning, decisionmaking, and project execution.** Section 106 requires Federal agencies to take into account the effects of their actions on historic properties, and to provide the Council with a reasonable opportunity to comment on those actions and on how Federal agencies actually take historic properties into account in their decisions.

Since 1966, additional executive and legislative actions have improved how Federal agencies manage historic properties and consider heritage values in planning projects. Regular

congressional oversight has resulted in amendments to the National Historic Preservation Act that have refined the program and honed the tools for exercising Federal leadership and stewardship. Last amended in 1992, the Act has strengthened the national partnership, most recently bringing local government and Indian tribes aboard.

While passage of the Act in 1966 found most agencies of the Federal Government at a loss to respond to the challenges of historic preservation and the growing public interest it generated, there has been much progress subsequently. Today, agencies with major stewardship responsibilities for public lands and resources, or causing the most frequent, significant effects on historic properties through Federal assistance and regulatory programs, have substantial historic preservation responsibilities. However, none of these agencies has historic preservation as a central facet of its mission, and none has a leadership or coordinating role beyond its own resource management and planning responsibilities. These duties the Congress entrusted to the Council, working closely with the National Park Service as well as non-federal partners.

For thirty years, the national historic preservation program has continued to rely upon the partnership between the Council, the NPS, and the SHPOs, and has expanded to embrace local governments and Indian tribes. As with any successful partnership, collaboration and division of labor have remained essential ingredients. Over the years Congress, through various changes to the Act, has reaffirmed this partnership. The roles of each partner have evolved to reflect the growing sophistication of the program, recognizing mutually supportive responsibilities.

The Role, Functions, and Need for the Council

Nowhere in the preservation program is this partnership more in evidence than in the Section 106 process. The basic steps of Section 106 are straightforward: a Federal agency planning to take an action that might harm historic properties identifies properties likely to be affected, assesses their action's impact upon them, considers alternatives to lessen harm, and chooses a solution that considers the values of the historic properties in relation to the other public interests associated with the proposal.

Likewise, the limits of the process are clear: there must be an action that affects a property on or eligible for the National Register of Historic Places and that action must have some Federal involvement. Absent those conditions, Section 106 does not apply. The law does not give the Council or any other preservation official a veto over an action affecting a historic property, regardless of the nature of the impact. Importantly, Section 106 places no prohibition on the rights of a private property owner to alter or destroy a historic property; it only requires that a Federal agency "stop, look and listen" before helping such an action.

The Section 106 process embodies the partnership undergirding the national program. Federal agencies consult daily with SHPOs as they assess the impacts of their actions on historic properties and seek ways to minimize harm. The NPS sets the standards for identifying, evaluating and treating historic properties. Local government, Indian tribes, businesses,

preservation groups and the general public all have an opportunity to be heard in the process. Overseeing it all and regularly engaging in shaping outcomes in individual projects is the Council.

The Council and the role it plays are vital to ensuring that the American public has a say in Federal decisions affecting America's heritage.

-The Council, through the Section 106 process, provides a place and opportunity for people to be heard, and is essential to protect historic resources valued by a community.

-The Council and Section 106 bring balance and common sense to preserving the past while serving the needs of today and the future.

-The Council's presence ensures that there is a forum at the national level to safeguard the public interest.

-The Council's involvement brings consistency, which can save time and money, and also provides a neutral third party for mediation and dispute resolution when necessary.

The Council has administered the Section 106 process for nearly thirty years. What has the Council achieved, and what remains to be done?

As designed by the Council, the Section 106 process relies heavily upon consultation among Federal agencies, project proponents, SHPOs and other affected parties, ranging from preservation groups to Indian tribes to private property owners, to resolve potential problems. The Council is often engaged in these consultations, particularly those with significant public controversy or complex preservation issues. Council involvement varies from State to State, and from agency to agency, depending on the capability and desires of the participants to reach responsible solutions. Thus, it is important to note that solutions are pursued that promote the overall public interest, not simply the best preservation solution at all costs. In this regard, the unique composition of the Council is reflected in its approach to its work, as the Council brings diverse views and expertise to its goal of making historic properties, in the words of the Act, "a living part of our community life and development."

While much of the interaction with Federal agencies in the Section 106 process involves the State Historic Preservation Officers, the Council serves an irreplaceable function in assuring consistency between States and coordinating historic preservation reviews for multi-state undertakings such as pipelines, transmission lines, and highways. Without the Council's substantive involvement, such projects would risk delays and conflicts in the environmental review process.

The Council also plays an important role in large, complex, controversial development projects, involving diverse parties with differing concerns and agendas. Hundreds, or even thousands, of

citizens may show up at public hearings or otherwise make their views known. The Council has demonstrated repeatedly that it can serve as a facilitator, mediator, and catalyst for helping to resolve these sorts of conflicts and make sure that the diverse concerns of various parties are considered and addressed in that solution.

Beyond its regular involvement in approximately 3,000 cases a year, the Council plays a central and unique role in carrying out Section 106. Through the government-wide procedures it prescribes, the guidance and interpretations it provides, and the training, information and technical assistance it offers, the Council ensures the smooth functioning of Section 106. Questions of application to a wide diversity of Federal programs are answered and effective information to the public is made available so that citizens across the country can effectively participate in the planning of Federal actions that affect their cherished heritage.

There is another dimension to the Council's work that warrants the Committee's attention. Under Section 110 of the Act, Federal agencies must establish internal historic preservation programs This provision is intended to adapt the mandates of the Act to the specific needs and operations of each Federal agency. However, Federal agencies cannot do this alone. For several years, the Council has committed itself to assisting Federal agencies in the development of these required programs and procedures. Within the limits of available funding, the Council provides its unique expertise, based on years of dealing with the full range of agency actions through individual Section 106 case reviews, helping agencies craft more efficient and less costly ways to meet their statutory historic preservation duties.

In the long run, this Federal program improvement activity will be the Council's most lasting contribution to preserving our Nation's heritage. The steps taken today in that area are not as prominent as engaging in a high-profile case involving the threat of harm from a Federal project to a cherished historic property. But the investment of Council time and resources will significantly bring us closer to the long-term goal of Federal leadership and stewardship in historic preservation.

Ways to Streamline the Section 106 Process

Section 106 has demonstrated success and effectiveness for nearly 30 years. Time and time again, the successes of the Section 106 process can be shown to far outweigh the failures. Of the nearly 12,000 cases reviewed by the Council in the last five years, less than one half of one percent failed to result in agreement. These agreed-upon solutions, representing acceptance by major stakeholders of the outcome, benefit the government and recipients of Federal assistance and permission. Litigation is rare compared to other Federal environmental laws and no Section 106 agreement has ever been overturned in court.

Yet the Section 106 process is not perfect. Over the years the Congress has aided us in making statutory adjustments to better refine the process and help us achieve our objectives. In 1992, many changes were enacted to further the goals of the Act; they range from setting new standards

of performance for Federal agency historic preservation programs to empowering Indian tribes as full partners in the national historic preservation program. These provisions are now being implemented and hold great promise for realizing the vision of the 1966 Act.

For its part, the Council has been preparing improvements to the Section 106 process through amending the regulations that govern Federal agency conduct of historic preservation reviews. Frankly, our first effort at regulatory revision, published for public comment in October, 1994, was seriously lacking. Our users told us so and we have listened. Last summer we came forward with a revised draft that has been circulated for informal comment. Nearly 100 commenters responded, largely supportive of our proposal but universally of the sentiment that further refinement is needed. We are heeding their advice and currently are reworking the draft before publishing a proposal for formal public comment.

Our revisions are based on principles that have widespread support from the full range of users. As embodied in revised procedures, they would:

-Better focus the Section 106 process on situations where there are significant impacts on important historic properties

-Give greater deference to decisions reached by agencies and SHPOs, emphasizing outcomes over process

-Direct the Council's resources to those cases where its input could solve intractable problems and on improving the capacity of Federal agencies to do sound planning that properly considers historic preservation factors

-Place more Council emphasis on ensuring that the Section 106 process runs smoothly and efficiently

-Relate historic preservation reviews more closely to those required by the National Environmental Policy Act

-Enhance the access of the public, Indian tribes, local government, applicants for Federal assistance and private property owners to Federal decisionmaking affecting historic properties

-Reduce paperwork burdens and simplify administrative processes by providing flexibility and a variety of alternative ways to meet agency legal obligations

We can make the current process better. We are committed to putting into place constructive changes to meet current shortcomings and problems, to bring innovative approaches and to enhance the efficiency of the process. We hope to have significant procedural improvements in place in FY 1997 through changes to the Section 106 regulations. Reauthorization of our agency is essential to achieve that.

Listing of Properties in the National Register of Historic Places

The National Register of Historic Places defines the basic scope of Section 106. For that reason, the Council has a great deal of interest in the operation of the National Register process. The NPS administers the National Register: it set the criteria for listing, establishes the process for entry and operates the system for determining eligible those historic properties not yet on the Register. While the Council generally defers to the NPS on these issues, it also works in partnership with the NPS on addressing areas of mutual concern.

One such area is the process for determining properties eligible for the National Register. This system finds its basis both in NPS regulation, and in the regulations issued by the Council to implement Section 106. Currently we are engaged in an intensive effort with the NPS and our State partners, represented by the National Conference of State Historic Preservation Officers, to improve that process. We all agree that steps need to be taken to ensure greater consistency and predictability in judging properties to be eligible for the Register and thus entitled to consideration under Section 106. It is too early to state definitively what improvements will be made. However, I can say that we believe the statutory basis for the National Register program is sound and provides the authority and flexibility to deal with the current issues in the eligibility process.

I would like to note the Council's interest in H.R. 563, another topic of this hearing. Integral to the listing issue, this bill would dramatically change the treatment of traditional cultural properties under the National Historic Preservation Act. These properties are the living heritage of Native Americans and currently given protection under Section 106. The Council has spent much time exploring the complex issues of according proper attention to these sensitive resources. The Council membership will adopt comments on this legislation at our meeting on March 22 and convey them to the Committee in furtherance of our statutory role as advisor to the President and the Congress on historic preservation matters.

Technical amendments

Before closing, I would like to bring to the Committee's attention the desirability of some minor technical amendments. Enactment of these would improve our efficiency and better equip us to build the partnerships we need in the future. They fall into two categories. The first embraces simple technical corrections, such as providing a fixed term for our Native American member. That position is the one appointment that has no such limit. The second includes amendments that would equip us to work smarter and more cooperatively. An example is revising our authority to receive funds from other agencies and organizations so that we may pursue activities on a cost-sharing or reimbursable basis when necessary.

We are presently reviewing our needs in this area and will provide specific suggestions to the Committee for the record.

Conclusion

Reauthorization of the Council is vital to fulfilling the long-term promise of the National Historic Preservation Act. Its role in the Section 106 process, both on a daily basis and as the responsible custodian of the system, is essential to giving our heritage the consideration it requires in Federal planning and decisionmaking. Its longer term work with Federal agencies and our preservation partners will allow the vision of the Act, effective Federal leadership and stewardship in preserving our heritage, to be realized. We look forward to the continuing support of the Congress.

STATEMENT OF KATHERINE H. STEVENSON, ASSOCIATE DIRECTOR, CULTURAL RESOURCE STEWARDSHIP AND PARTNERSHIPS, NATIONAL PARK SERVICE, U.S. DEPARTMENT OF THE INTERIOR BEFORE THE HOUSE SUBCOMMITTEE ON NATIONAL PARKS, FORESTS & LANDS, CONCERNING OVERSIGHT HEARINGS ON THE NATIONAL HISTORIC PRESERVATION PROGRAM AS CREATED BY THE NATIONAL HISTORIC PRESERVATION CT OF 1966, AS AMENDED

AND

H.R. 3031 TO AMEND THE ACT OF OCTOBER 15, 1966 (80 STAT. 915), AS AMENDED, ESTABLISHING A PROGRAM FOR THE PRESERVATION OF ADDITIONAL HISTORIC PROPERTY THROUGHOUT THE NATION, AND FOR OTHER PURPOSES.

March 20, 1996

Thank you for the opportunity to present a report on the state of the national historic preservation program and to present the Department of the Interior's views on H.R. 3031. H.R. 3031 provides for the reauthorization of the President's Advisory Council on Historic Preservation. We strongly support this bill.

October 15 of this year marks the 30th anniversary of the National Historic Preservation Act. On that day in 1966, the Congress declared the protection of significant historic properties across this great country to be a national policy. That act encouraged and supported America's effort to preserve the tangible evidence of our past for the benefit and enjoyment of future generations of all Americans.

I am here to report to you that through those 30 years, a combined partnership of private citizens, industry and business, and federal, State, tribal, and local governments have worked together to create a cost-effective, successful, and model federal program. The vision dreamed of by the members of the 89th Congress thirty years ago is a reality thanks to a unique federal partnership; one created not by a heavy-handed and costly federal government, but one developed, directed, and supported by a broad national partnership at all levels. Much has been done in thirty years; but much remains to do.

Historic places fill a fundamental human need to know who we are as a people and as individuals. Historic places are the tangible embodiment of the American story. Historic places define community. The American story is best understood at the authentic places where these events took place. No synthetic or cyber approximation can equal the transcendent experience of standing where Brigham Young and his followers first saw the great Salt LakeValley or where young servicemen and women served at Dutch Harbor Operating Base in the Aleutian Islands during World War II or following the momentous route of Hernando de Soto and his expedition throughout the Mississippi River Valley in the 1540s as they came face to face with the marvels of sophisticated mound building cultures whose descendants today are known as the Creeks, Choctaws, Chickasaws, Cherokees, and Catawbas or where young soldiers faced each other at Gettysburg, Pennsylvania, at Honey Springs, Arkansas, or at Glorietta Pass, New Mexico, during the American Civil War.

Many historic sites are associated with the great leaders and great events. But more often than not, the American story was played out at everyday places by people whose names are not recorded in history books - on Main Street, in this nation's rapidly disappearing countryside, in our neighborhoods, our factories, our churches, and our schools; at everyday places where our ancestors, yours and mine, settled this country, raised a family, and rooted themselves in the American landscape.

Historic places like the Tuskegee Institute in Alabama, the Parkside Neighborhood in Philadelphia, Pennsylvania, founded by German immigrants and the St. James Park Historic District is Los Angeles, California, celebrate American values: courage, leadership, hard work, compassion, and faith.

The National Register of Historic Places, established by the National Historic Preservation Act thirty years ago, is unique in the world in its recognition of historic properties significant to everyday citizens. Today, the overwhelming majority of the properties listed by the National Park Service are commemorated for their importance to local communities and local identity. Most

properties in the National Register of Historic Places are put there because communities and local property owners wish to preserve or to enhance a sense of their own unique identity for their children and their children's children. These properties are not listed because a federal agency designates them against the will of local communities or land owners or because they commemorate the famous and grand, but because of local citizen initiative and support. It is a uniquely American system of honoring our past.

Historic places tell of our diverse roots and our common adventure; they impart an indelible sense of the profound truth of the American motto: "out of many; one." Historic places tell us not only "who" we are but "where" we are. At a time when mass media, mass production, and mass marketing push our nation toward homogeneity, historic places remain the signposts that distinguish one place from another. Ask someone to take you to their community's special, distinctive place; more often than not you will be led to an historic place. Not only are historic places a source of pride for community residents, they are a fundamental mooring that allows us to know that where we live is not just a dot on the map, but a place with its own past, present, and future of which we are all a part.

The national historic preservation program born thirty years ago remains essentially a local and State phenomenon as well as a private sector movement -- created and sustained in partnership with the federal government. Partnership is the key to our success over these three decades. No so-called federal program is ever successful without the full participation, ownership, and investment of those affected by it. Witness the recent achievement of the Certified Local Government (or CLG) Program, one of the many programs of the National Historic Preservation Act. I am pleased to report that this month, the Director of the National Park Service and the State of Georgia certified the city of Stone Mountain, Georgia, as the nation's one thousandth Certified Local Government. Mary Beth Reed, Chair of the Stone Mountain Historic Preservation Commission stated that, "entry into this program helps us to enhance and preserve our community resources, not only because of the financial resources it will bring but also because it makes us part of a large network of support and assistance." America is, after all, a nation of

communities. If we lose these important anchors, we lose what it is to be an American and to understand what American values are all about.

Historic preservation not only makes sense to the heart, it makes sense to the head as well. Preserving historic places means community revitalization and it means strong economic development. Community revitalization strategies based upon preservation rather than demolition have proven far more successful in stabilizing neighborhoods, fostering community pride, and enhancing the local tax base. In the thirty years since passage of the National Historic Preservation Act, historic preservation has become big business. Most of the $8 billion a year tourist industry in the nearby Commonwealth of Virginia is generated by Americans visiting historic sites and communities.

Thirty years ago, the Congress stated that preserving significant historic resources for future generations of American is a legitimate objective of public policy. Preserving significant historic resources is critical to maintaining public welfare. The community as a whole has a legitimate interest in the keeping and cherishing of our cultural public patrimony for generations yet unborn, regardless of ownership.

Our accomplishments have been, and continue to be, a unique product of a new federalism through partnership and support among 56 State Historic Preservation Offices representing State government, one thousand units of local governments, Indian tribes, the President's Advisory Council on Historic Preservation, the National Trust for Historic Preservation, colleges and universities, Federal agencies, the private sector, but most importantly, private citizens seeking to preserve what makes their communities unique for their children and yours.

The national historic preservation program supported annually by appropriations to the Historic Preservation Fund is a good buy for America. This is already a model of federalism and reinvented government. The National Park Service provides a national framework and assistance that enables, supports, and empowers State, tribal, and local decision making. State governments

exercise significant discretion in delivering program services to the public that best meet the unique circumstances locally. This intergovernmental effort pursues national policy through assistance, advice, consultation, and incentives, but acknowledges that property specific decisions are the province of the property owner and the local authorities.

The national historic preservation program and its partner participants working with the National Park Service, implement national policy in a highly cost-effective manner. The average federal appropriation to each State from the Historic Preservation Fund averages only $525,000 a year! It is a remarkably cost-effective benefit to every American citizen. The national historic preservation program pursues national strategies that preserve significant resources without resorting to government ownership. The program leverages significant state and local investment through matching requirements and through catalytic effect. It stimulates significant private investment through financial incentives. It pursues strategies that create private wealth, increase property values, and enhance the local tax base.

At this point I would like to address H.R. 3031, which provides for the reauthorization of the President's Advisory Council on Historic Preservation. The National Park Service wholeheartedly supports H.R. 3031. The Advisory Council is an essential partner in the national historic preservation program about which I just spoke. It advises the President and the Congress on matters relating to historic preservation, guarantees public interest and participation in decision-making that affects our nation's historic resources, promotes historic preservation training and education, and reviews and recommends improvements to the historic preservation policies and programs of federal agencies. In addition, the Advisory Council is responsible for ensuring that Federal agencies consider the potential effects of their undertakings on significant historic properties. In keeping with the Congress's and the Administration's directive to streamline government and make it more effective and responsive to this nation's citizens and State and local governments, the Advisory Council is in the process of revising the regulations for conducting the Section 106 process. We have had the opportunity to comment on its draft regulations and applaud the Advisory Council's efforts to make the Section 106 review process

more efficient and less burdensome to state and local governments and to private industry while still preventing the inadvertent destruction of this nation's most important archaeological, historic, and cultural resources for future generations. Bureaus within the Department have met with the Advisory Council to discuss a means by which bureau manual procedures might be approved by the Advisory Council for use in lieu of the procedures in the implementing regulations under section 106.

There is one major streamlining option that the National Park Service has discussed with the Advisory Council that we would like to see in the regulations. The National Park Service is recommending that the Advisory Council eliminate its own automatic review of all cases involving potential adverse effects to significant historic properties. This would be accomplished through "expedited adverse effect option" that interested parties in the Section 106 review process can use automatically if they all agree on the identification and evaluation of the historic properties and the mitigation of the project's adverse effects. We recommend that the Advisory Council review such cases only when certain conditions exist: for example, disagreement among the consulting parties, third-party information to the effect that the process is being subverted, potential effect on nationally significant resources, or an Advisory Council finding that an agency or State has systematically misused the review process in some way.

Within the 106 process potential for streamlining and project cost reduction exists primarily in the repeated review of documents and agreements. The Advisory Council rarely challenges what has already been agreed to by the Federal agency, State, and project applicant. As a result, in many cases, the Advisory Council's 30-day adverse-effect review period simply becomes 30 days in which the proposed project cannot move forward. In addition, the cultural resources are no more protected as a result of the waiting. At this stage of the national historic preservation program's maturity, Federal agencies and State Historic Preservation Offices working together are fully competent to produce acceptable agreements on how to best mitigate project effects on historic properties. The Advisory Council's greatest value at this point in the Section 106 process is that it can use its expertise to resolve conflicts and help all parties negotiate with each other in good

faith to reach agreements that both facilitate the needs of projects and protect historic resources. In addition, by removing itself from this mandatory case-by-case review, the Advisory Council will be better able to direct its limited resources toward assisting Federal agencies, States, and local governments in their own efforts to preserve and promote this nation's historical and cultural heritage.

Mr. Chairman, I am pleased to report that the national historic preservation program as envisioned by your predecessors is in a thriving and healthy coalition today. Never before have these ideals been so popular with the American public. Much remains to be done and we need your continued support on this important mission for all Americans. This Administration recommends continued support for the Historic Preservation Fund to States, Indian Tribes, and local governments, for the National Trust for Historic Preservation, and for the President's Advisory Council on Historic Preservation. The success of this unique thirty-year partnership is a balance among partners where the whole is greater than the sum of the parts. Remove any one, devalue any one, and the highly successful and cost-effective, thirty-year coalition will inevitably be weakened at a loss to every American citizen and every future American citizen.

Mr. Chairman, this completes my remarks. I appreciate the opportunity to appear before you and the committee and am prepared to answer any questions which you or members of the committee may have at this time.

NCSHPO
National Conference of State Historic Preservation Officers

SUITE 342 HALL OF THE STATES
444 NORTH CAPITOL STREET, N.W., WASHINGTON, D.C. 20001-1512
202/624-5465 FAX 202/624-5419

Testimony

before the

U. S. House of Representatives
Committee on Resources
Subcommittee on National Parks, Forests & Lands

The Honorable James V. Hansen, Chairman

Judith Bittner, President
National Conference of State Historic Preservation Officers
Alaska State Historic Preservation Officer

HR 3031

The National Conference of State Historic Preservation Officers appreciates the invitation of the Subcommittee on National Parks, Forests & Lands to testify on HR 3031 and the national historic preservation program created by the National Historic Preservation Act (16 USC 470). Your letter of March 12, 1996, requested the National Conference

> . . . to address three specific aspects of historic preservation including the need for re-authorization of the Advisory Council on Historic Preservation Act [sic] and any necessary changes to the role and function of the Advisory Council on Historic Preservation; your suggestions about how to streamline the 106 review process; and the process for listing properties on the National Register of Historic Places under the National Historic Preservation Act.

I have divided my testimony into four parts: I. Introduction, II. Advisory Council on Historic Preservation Re-authorization, III. Suggestions for Changes—Council; and IV. Suggestions for Streamlining—National Register of Historic Places.

March 18, 1996

I. Introduction

The National Conference of State Historic Preservation Officers is the association of the gubernatorially appointed officials who carry out the National Historic Preservation Act (16 USC 470) for the Secretary of the Interior and the Advisory Council on Historic Preservation. The National Conference is a 501(c)(3) organization, incorporated in the District of Columbia.

State Historic Preservation Officer for Alaska since 1983, I am directly responsible for the administration of the National Register and the consultation process under Section 106 and the Advisory Council on Historic Preservation regulations (36 CFR Part 800). My professional experience includes tenure as director of the State parks program for Alaska; I have served as chair of the National Conference's Committee on the Advisory Council which set the organization's national policy on Section 106; finally, I hold a master's degree in anthropology and a bachelor's degree in archeology.

II. Need for the Re-authorization of the Advisory Council on Historic Preservation

The National Conference of State Historic Preservation Officers supports the speedy enactment of HR 3031 to amend section 212(a) of the National Historic Preservation Act (16 USC 470) to authorize appropriations (in an amount not to exceed $5 million annually) for the Advisory Council on Historic Preservation for the fiscal years 1997 through 2002.

While the bill is a simple extension of appropriation authorization, the Subcommittee's decision to hold hearings broadens the focus to a consideration of the Council and its activities. In my testimony, I would like to address two topics: the need for Section 106 and the need for appropriations for the Council and its staff. (Suggestions for improvements for 106 and the National Register follow.)

106 Statistics for FY 95

The Section 106 process balances the preservation of our heritage with federal agency project planning needs. Most projects do not involve historic properties.

Source: Council and Park Service

86,000	reviewed by SHPOs
72,600	*no impact* on historic sites
10,400	impact
9,412	no adverse effect
988	adverse effect
983	projects resolved
5	considered by Council membership

A. Why is Section 106 necessary?

To answer that question, one needs to go back to the mid 1960's, a time of major federal expenditures on projects such as dam construction, interstate highways and urban renewal. Contemporaneously, the American preservation movement was growing. Americans who began to value "old and historic" districts (Charleston, SC, College Hill in Providence, RI, Old Town

24-568 O - 96 - 4

Alexandria, VA) felt helpless in the face of the "juggernauts" of federal bulldozers.[1] This need to temper federal actions motivated individuals, led by Representative Albert Rains (AL), to push for legislation. The National Historic Preservation Act, including Section 106, was the result. After its enactment, citizens had legal means to have historic properties considered (note: consideration only, not absolute preservation) in federal project planning. During the next ten years, the automatic demolition of historic properties slowed as the Council, federal agencies and State Historic Preservation Offices worked out a system for consultation and consideration. In 1976, the Council gained its independence from the National Park Service (after a difficult time over the construction of a high tower at the Gettysburg Battlefield which included conflicts of interest between the Council's mandate and the Service's interest in the tower) and turned the evolved consultation process into regulations.

Significant Resources Are Rare

The rarity of National Register-eligible resources speaks to the need for the 106 process.
- **Comparing census and National Register data shows that only of 1% of the building stock is eligible for listing.**
- **The Georgia SHPO has found that of all the buildings existing in 1940 (National Register has a 50 year-old requirement) only 27% survive today.**
- **For archeological sites, studies by the Wisconsin SHPO indicate that between 70% and 90% of the sites have been so destroyed or damaged as to have lost their eligibility.**

Many federal agencies have internalized and institutionalized the consideration of historic properties as they plan activities. However, the need for Section 106 remains. The duty of the federal government to consider impacts to our nation's heritage during project planning continues as strong as ever. The discovery of the African Burying Ground in Lower Manhattan, a previously unknown 18th century cemetery, demonstrates the continuing need for tempering federal actions. Similarly, the citizens of Savannah, Georgia, relied on Section 106 to give them a voice with the federal judiciary about the construction of an oversized courthouse in the National Historic Landmark district.

B. Why is the Council necessary?

Some have said that the protection of historic properties can continue without the Council, without funding for staff, office space, expenses. The National Conference believes, on the other hand, that the Council and its staff are essential. Although we do have suggestions for improvement (see below), the Council is vital to the national preservation program. First, a national program needs a national presence to set standards for consultation and compliance. (This is comparable to the National Park Service staff setting standards for the National Register, for restoration and rehabilitation.) Federal agencies operating across State lines expect a certain degree of national consistency which the Council's regulations and their published guidance provide.

[1]Charles B. Hosmer, Jr., "Introduction to the New Edition," *With Heritage So Rich*, Washington, DC: National Trust for Historic Preservation, 1983, p 10-11).

As checks and balances are a part of the American system, the Council provides a critical opportunity for citizens, or applicants for federal assistance, to participate and be heard in the governmental decision making process.

The Council staff provides a national perspective that becomes a communications vehicle for innovation between federal agencies and the states. Their expertise and perspective make them able advisors to federal agencies in setting up agency preservation programs.

If the suggestions we propose are carried out, the Council staff could focus on its important role in historic preservation analysis. In the past, the Council developed major studies on topics such as the study of lower crime rates in historic districts as compared to other areas, and the system for calculating the embodied energy in existing buildings a component of the comparison of rehabilitation versus new construction costs.

Few Projects Require Surveys

Just as the number of properties eligible for the National Register is small, the number of surveys recommended by SHPOs during project review is limited.

Between 1992 and 1995 the Massachusetts SHPO recommended that federal agencies conduct archeological surveys on 2% of the projects they reviewed. Of the sites discovered in initial studies, only 8% met National Register criteria and required further federal agency action.

States use their Section 106 experience to inform recommendations to agencies predicting site location and site types. In Massachusetts, sites are found in 76% of the recommended surveys while in Connecticut, knowledge of resources leads to sites being found in 90% of the recommendations for surveys.

III. Suggestions for Streamlining the Section 106 Process

The Section 106 process is modest, efficient and works well. Out of 86,000 federal projects reviewed in fiscal year 1995, only five were unresolved by the State Historic Preservation Officer, the federal agency and Council staff through avoidance or mitigation of adverse effects. As a highly decentralized process, and one that is advisory only, successful resolution depends upon a strong federal presence managing the process, adequate knowledge of the resources being impacted, public participation, and cooperation from federal agencies in considering impacts early in the planning process when alternatives can be reasonably considered. Following the Council's opportunity to comment, the federal agency may proceed with whatever it chooses. In the interim, historic properties have been given a chance, and the public an opportunity to comment. It is the equivalent of looking in both directions before crossing the street.

Improvements to the process must take into account the rarity of the resource and recognize the fact that most projects in the 106 process involve no new effort to locate historic resources. Second, improvements to the process also must balance streamlining with the need to maintain the consultation and public participation which provide an essential check on the system and help to ensure that decisions are truly made in the public interest. The Council, in

order to be a responsible manager, must also be provided with information about actions taken under its authority, and be able to intervene when warranted. With this in mind, the following suggestions are made for the Subcommittee's consideration.

A. Refocus Council resources on outcomes rather than process

Over time federal agencies, States, local governments and tribes have become more proficient in carrying out the essential steps of identification, consultation, and consideration of alternatives which undergird the Section 106 process. As a result, and also because of diminishing resources, the Council has relied more and more on the State Historic Preservation Officers and others to complete the process, and less on case-by-case review. This is reflected by many proposed improvemetns in the latest draft of the Section 106 regulations, and by a continuing emphasis upon executing programmatic agreements with federal agencies.

To accelerate this process, the National Conference *recommends the Council move even further in the regulations toward use of two party agreements (State or tribal or local government and the federal agency) for all cases.* In return, the Council should spend more of its scarce resources on monitoring the outcomes, developing recommendations to improve the process, and working with more federal agencies to develop programmatic approaches to meeting their responsibilities under the law. Acknowledging that there is a wide variance amongst federal agencies in terms of their staffing, internal operating procedures, and their ability to implement the outcomes of their own decisionmaking process, perhaps a pilot program in a western State with a large land managing agency would be a good test.

B. Greater emphasis on coordination of the National Environmental Policy Act

While there is some overlap between these two authorities, the National Conference believes complete reliance upon the National Environmental Policy Act would be to the detriment of historic properties. Nevertheless, a greater effort is needed to integrate these two processes. Several proposals have been made in the past, including a substitution (contained in the current draft of the regulations) for Section 106 compliance when the agency's NEPA procedures contain the key elements of the Section 106 process. Much work remains to be done to make such proposals attractive, however, due to the difficulty of gathering information and making decisions for large multi-state projects. *The Advisory Council should accelerate development of procedures for a single set of actions to satisfy both Section 106 and NEPA, and should permit States to include such substitutions in the two party agreements described above.* The cooperation of Coucil on Environmental Quality is needed in this effort.

C. Greater encouragement of federal agencies to develop preservation programs

General agreement exists among State Historic Preservation Officers, federal agency preservation officers, and others that the need to complete Section 106 compliance as a project-driven responsibility, should not overshadow broader agency efforts to identify and plan for the management of the historic properties under their jurisdiction. General agreement also exists that Section 106 compliance is most efficient in agencies that have successfully implemented the broader program. This issue is of special concern to many western States with large

percentages of federal land ownership and is pertinent to the goal of streamlining Section 106.

The authority for providing guidance and monitoring agency programs is divided between the Council and the National Park Service, so any recommendation in this area must involve both parties. The guidance in contained in the "Secretary of the Interior's Guidelines for Federal Agency Responsibilities Under Section 110 of the National Historic Preservation Act." A new, more concise and more flexible draft was prepared by the NPS in 1995, but it has never been released for publication and comment. *The National Conference recommends that the National Park Service and Department of the Interior release the guidelines for publication immediately.*

IV. Suggestions for Streamlining the National Register Nomination Process

The National Park Service and the National Conference of State Historic Preservation Officers have studied National Register nomination process for more than two decades. Of all the program areas in the national historic preservation program, the National Register has the fewest problems. The National Register is also one of the most popular components of the historic preservation program with the public. Therefore, improving customer service is important.

The National Register is an essential first step for the other components of the national preservation program (e.g., rehabilitation tax credits). It is through the National Register, working on nomination forms, that many individuals become committed preservationists. Making the nomination process streamlined and more efficient will result in a larger historic preservation constituency.

The following are suggestions for streamlining including the mention of improvements already implemented by the National Park Service.

A. "The nomination process takes too long."

The National Conference and the National Park Service are working on eliminating unnecessary delays in the nomination process. The nomination process consists of the research and writing of the nomination form, communication and consultation with affected property owners, consideration and review by certified local government, verification that the nomination meets the Criteria for Evaluation by the state review board, nomination to the National Register by the State Historic Preservation Officer, notification in the *Federal Register*, and a 45-day waiting period.

1. The National Park Service is in the process of eliminating the requirement that the state review board consideration of proposed nominations that are being proposed and desired by the property owner has to take place at face-to-face meetings.

2. Rely on the State notification procedure and eliminate the requirement

for the *Federal Register* notice.

3. Authorize qualified State Historic Preservation Offices and Certified Local Governments to list properties on the National Register directly.

4. Continue to pursue computerization of inventory and nomination information to speed the transfer of documentation.

Caution: Expediting the process must not occur at the expense of opportunities for owner and citizen participation and comments. It is essential for the State Historic Preservation Offices and the Secretary make sure affected and interested parties understand the implications of National Register listing.

B. "The forms are too complicated."

Private citizens facing a National Register nomination form for the first time have a several preservation techniques to master: preparing architectural descriptions, researching the property's history, justifying its significance, relating it to the Criteria for Evaluation. This can be expedited by

1. Publish National Register bulletins to guide preparers in filling out the forms.

2. More SHPO/Register staff conducted training sessions on preparing nominations

3. More State Historic Preservation Office staff to prepare nominations for citizens

4. Provide more professional staff in State Historic Preservation Offices to help owners fill out the forms, or to undertake the whole nomination.

5. Provide funding to accelerate the research and writing of State historic contexts that help evaluate the significance of a proposed nomination by putting the individual property in a larger setting.

6. Reduce requirements to the absolute minimum to qualify a property for listing.

Caution: the research and requirements for review at the State Historic Preservation Office level are important to ensure that the properties listed meet the National Register Criteria for Evaluation and have historic integrity.

C. Keep National Register designations separate from entanglements with State or local laws. It is important to keep National Register listings distinct from designations under State law or local ordinance. Since state and local laws have different, and sometimes more stringent, protective mechanisms, such provisions should be enacted through a separate State or local process. Often it seems simpler to apply State laws and local ordinances automatically to National

Register designations. In the end this saddles the National Register with other, stricter requirements that are not a part of the federal law.

1. In Alaska, local provisions for the establishment of locally designated historic districts with design review occur through a separate and distinct process. While local proponents can, and do, use the information found in National Register nomination forms, a totally separate process exists to make the local designation, complete with ample opportunity for public discussion and participation.

2. Similarly in Baltimore, Maryland, the local historic zoning districts control how a private property owner may paint the exterior of his or her house. This strict requirement has nothing to do with National Register listing. The local designation occurs after substantial property owner involvement and public comment.

3. However, in California, determinations of eligibility for the National Register automatically trigger the California Environmental Quality Act which can control actions of private property owners. This automatic connection understandably confuses the meaning of the National Register. Properly, the institution of State environmental control needs to follow a separate *State* designation process, rather than automatically coming into play with National Register listing. In the end, though, the decision to tie Register listing to State environmental laws is a State decision.

D. Implementation of suggestions: the support of the Subcommittee for these recommendations for streamlining the National Register nomination process implemented through federal action would be greatly appreciated by the entire historic preservation community. We look forward to working with the Subcommittee on making this process more efficient and more accessible to the American people.

March 14, 1996

STATEMENT BEFORE THE
INTERIOR HOUSE SUBCOMMITTEE ON PARKS, FORESTRY, AND PUBLIC LANDS
MARCH 20, 1996
WILSON MARTIN
DEPUTY, STATE HISTORIC PRESERVATION OFFICER
STATE OF UTAH

It is my pleasure to be here and address this Subcommittee and provide some comments regarding the National Historic Preservation Act (The Act) and specifically its implications on the Advisory Council on Historic Preservation, State Historic Preservation Offices, but most importantly the actions and decisions of federal agencies regarding the protection of cultural resources under § 106.

Thirty years ago the National Historic Preservation Act was passed to help preserve the historic and culture fabric of our nation as a living part of our community life. The portions of The Act under review today were intended to have federal agencies, prior to undertaking any action which might significantly affect a cultural or historic resource, "take into account the affects" of its undertakings on that resource. This required the agencies to pause and reflect on its actions, but did not take away the authority to act regarding historic resources. The Act also created a process to insure that the interests of preservation and use of historic resources were given a high priority.

This statutory structure of the federal agency, SHPO and Council was designed to aid and educate the parties regarding consistent standards of historic preservation. The Council's role has included detailed review of the individual actions and decisions of the other parties. This all inclusive involvement by the Council, as the federal agency created to oversee the process, may have been initially needed as the federal agencies and states were not experienced or trained in preservation, nor was preservation a priority or goal of the agencies or the states. This is no longer the case.

I have been involved in this process for over 20 years as a SHPO and a Deputy SHPO in the State of Utah housed within the Division of State History. I have seen the parties involved in the process receive that education and grow to become experienced, competent, preservation-oriented agencies. Preservation is now accepted as a operational standard by the state and federal agencies. The public at large has also become educated, as well as involved, in the process and goals of preservation.

Formerly, developers came in the middle of the night and destroyed historic structures when preservation issues arose. Agencies saw preservation as an obstacle and would hide the existence of historic resources. Bulldozer operators, when they hit an archeological site, would just keep going, afraid of stopping for fear of what would happen.

But recently in Utah, the foreman at a construction site called my office when the bulldozer operator hit an archeological site, and stopped work until we arrived. We recently had an extensive fire at the historic governors mansion. Before the fire was out, the state facilities manager called my office to get us involved in

minimizing fire damage and starting the preservation and restoration work. Our State Division of Trust Lands contacted my office about developing a subdivision and using, as a marketing tool, the opportunity and responsibility for scientific recovery of archaeological sites. As an aside, you should be aware that Trust Lands is required to maximize its earnings from its lands. A small town in Utah contacted us about a beautiful but troubled historic city building and about how to use, preserve and save it, not how to replace it. A federal agency contacted my office because of one of our initiatives in preservation and heritage tourism. The agency has a historic resource and they wanted to see if they could partner with us to preserve their resource and make it a part of and use it in a heritage tourism initiative. As these examples show, preservation in Utah is not only a priority for the public, the state, and federal agencies, it is actively recognized as a partner to economic development.

The Council has grown beyond its original consulting and advisory role. Through the process of its being involved in individual case decisions, as well as programmatic agreements between agencies, it has become a "regulatory agency". Its involvement in individual federal agency undertakings has made it appear to be engaged in the management of agency operations and decisions and, concerning the SHPO, in superseding State interests. The Council undertook and now has been given control over the process through it rule-making authority. Under the Council's regulation this "process of consultation" has developed a complexity that overburdens good intentions and allows the process to become more important than the products of preservation. We spend more time on the paperwork of the process and less on actual preservation and restoration. In addition, roles as well as decision

making authority have become confused-- the SHPO defers to the Council, the Council defers to the Agency, and the Agency defers to the SHPO.

Let me give you my understanding, my vision, of how The Act can work and how it needs to work in order to be more effective. The Act needs to be flexible in order to facilitate good decisions by the agencies. The agency, in making its decision, needs to consult with professionals and others interested in preservation, who should be sensitive to local history, resources, and governmental interests - i.e. the SHPO.

Now, let me talk about the Council and how it should be involved in the process. I do not think that the Council should be dissolved or have no interest or involvement in the process as a whole. However, it no longer needs to be involved in the individual preservation decisions of the agency, as the agency can make good preservation decisions and the agency should be responsible for its decisions. The Council should be involved with how the federal agency, on a national level, is fulfilling that agency's duties under The Act. The Council should be looking on a programmatic rather than a project level at how each federal agency is managing its preservation program, and reporting the Council's observations and suggestions to the President, the Congress and the agencies. The Council will be seeking consistency with and providing the vision of the goals and purposes of The Act on the national level. These are the duties as set forth in § 202, which are not the duties of a regulatory agency.

I want now to talk about the Utah experience. We have a state statute that parallels The Act except that there is no "advisory council" or other like entity involved in the state process. However, the public does take a keen interest and is

regularly involved in preservation issues. State agencies, being responsible for their decisions, are empowered to and actively seek creative solutions to preservation issues and now are seeing historic resources as opportunities and as having economic value, not as obstacles. This State process works expeditiously while insuring adequate attention is given to cultural and historic resources. This is what The Act was meant to do.

Mr. Chairman, the Utah Agency responsible for managing and maintaining state buildings has adopted, as its mission statement, "Maintaining Quality for Utah's Heritage." The State Division of Trust Lands now has staff archaeologists to work in-house on preservation issues. The State Division of Facilities Construction and Management now has architects trained in preservation technology. Public/public and public/private partnerships are being created in ever increasing numbers, focused and built upon preservation and heritage tourism - the Mining Heritage Alliance is creating public experiences and destinations while preserving and restoring historic mining sites and structures; the Trails Consortium is preserving historic trails while providing historic interpretations and unique experiences for the public. This list goes on and on. Note should also be made that it is the State Department of Economic Development that is the central and primary agency housing these developments.

So, what should Congress do? It is my recommendation that you not eliminate the Council but refocus its energies and interests towards the national federal interests I've outlined. This will allow the states a clear voice as a consulting party, not as a regulator, in working with federal agencies on their decisions that impact the resources and heritage of the individual state. It will return the

Council to its roots of assisting federal agencies in meeting their preservation duties under The Act and will allow the Council to develop the national federal preservation mission.

By way of legislative action, Section 106 needs to be amended to have the federal agency afford the SHPO, rather than the Council, the reasonable opportunity to comment on and provide professional advice concerning any undertaking. Section 211 needs to be amended so that the authority to promulgate rules and regulations governing this process of preservation is not exercised by the Council but by each federal agency in connection with the adoption of its preservation program. Similarly, Section 110(a)(2)(E) needs to be amended to provide that an agency's procedures for compliance with 106 review is consistent with The Act not regulations issued by the Council. This will make clear the roles in the process - that the federal agency makes the decision concerning its actions, that a consultation process is initiated through the SHPO concerning preservation issues involved in the agency's undertaking, and the Council is involved in the overall preservation efforts of federal agencies regarding consistency with the purposes of The Act.

There may be other suggestions and solutions which would achieve this vision, clearly define the roles of the various parties, and permit successful preservation efforts under the Act. The State of Utah stands ready to support those alternatives.

These changes are not just to have federal agencies make better preservation decisions, but they will. These changes are not just to empower the federal agencies and the SHPOs to arrive at creative solutions to preservation issues that take greater account of local concerns, but they will. These changes are not just

to return the Council to its original purposes as an advisory council, but they will. These changes will do much more.

Let me tell you about Sanpete County in Utah. It is a rural county that is economically depressed, struggling to provide opportunity for its sons and daughters. It's an agricultural county. But in this county lie a unique and world-class collection of 19th and early 20th century pioneer housing and architecture. These communities have also maintained their crafts and traditions. Surrounding these communities are tremendous natural beauties and recreational opportunities.

Two years ago the state started a Main Street program in one of the communities, which focuses a business redevelopment effort preserving historic and cultural resources and traditions. Three sister communities had previously become interested in preservation, establishing local preservation commissions. They had contacted my office because of their desire to preserve their historic resources. The State Department of Community and Economic Development then offered its help to provide needed expertise, marketing and other tools to assist these cities in their development. Other state agencies also got involved offering their assistance but also to further their own goals. These included the Travel Council, the Department of Transportation, Department of Agriculture, and the state colleges and universities. Various federal agencies, having land and other historic resources within the area, saw an opportunity for preservation and restoration of their facilities and use of those facilities in the overall area plan being discussed. All these separate entities saw a mutual interest and advantage in focusing their different programs and needs on the development of the unique heritage of the region and in the preservation and development of the historic resources of the area.

There was recently created, as a separate political subdivision of the State of Utah, the Sanpete Regional Heritage Tourism Council. This entity has as partners the various federal agencies, state agencies, county government, the four primary cities, and private heritage organizations. The purpose of this new political subdivision is economic development through the development of heritage tourism and heritage resources, based upon and centered around the preservation of the unique historical and cultural resources of the area. The state and local agencies were responsible for and empowered to make decisions concerning their historic and other resources. They consulted with the SHPO, took into account the comments and the effects of their actions, and created this special opportunity. This is what The Act should do.



National Mining Association
Foundation For America's Future

Testimony of

Robert W. Micsak
Vice President & General Counsel
Independence Mining Company, Inc.

On behalf of the
National Mining Association

Before the
Subcommittee on National Parks, Forests and Lands
of the
Committee on Resources
U.S. House of Representatives

Oversight Hearing on Historic Preservation

March 20, 1996

24-568 39

1130 17TH STREET, N.W., WASHINGTON, D.C. 20036-4677, (202) 463-2625 FAX: (202) 463-6152

Good morning, Mr. Chairman and Members of the Subcommittee. My name is Robert Micsak, and I am Vice President and General Counsel of Independence Mining Company, Inc. Independence is a gold mining company with mines located in Nevada and Colorado. We employ almost 1,000 people at our mines, which produced over 280,000 ounces of gold in fiscal year 1994. My testimony here this morning is presented on behalf of the National Mining Association ("NMA"). I chair the Historic Preservation Task Force of the NMA Lands Committee.

NMA is the voice of one of America's great basic industries -- mining. The association's members provide the basic economic foundation for virtually every region of the United States. They represent coal and hardrock mining operators, mineral processors, bulk transporters, mining equipment manufacturers, financial and engineering firms, and other businesses related to the mining industry. The headquarters operations of NMA members are located in 42 states -- represented in Congress by some 400 members of the House and 84 senators. Some form of mining represented by the association occurs in all 50 states.

We deeply appreciate the opportunity to present our views to the Subcommittee on the important subject of historic preservation. First and foremost, NMA supports the preservation of our Nation's heritage. After all, mining is an important part of our great national story -- the voyages of Columbus were driven by dreams of mineral wealth -- the industrial might of the United States was built on iron mined from the Mesabi Range beginning in 1843 -- and gold found at Sutter's Mill, California, in 1848 led the way to the opening of the West. My company is intimately familiar with historic preservation values since

the Independence Mine and Mill developed by Winfield Scott Stratton in the 1890's and located on the property of our Cripple Creek and Victor Gold Mining Company, has been listed on the National Register of Historic Places.

As proponents of historic preservation values we support the principles enunciated in the National Historic Preservation Act ("NHPA" or "Act"). This statute was enacted in 1966 and has been amended 11 times, most recently in 1992. Among the Act's important provisions are--

- charges to Federal agencies and State governments to inventory Federal and nonfederal lands, respectively, for significant historic properties of national, regional and local interest;
- establishment of the National Register of Historic Places for which the Secretary of the Interior is told to develop criteria for the designation of (and to designate) significant properties nominated by Federal agencies, states, local governments, or property owners as listed or eligible for listing on the National Register;
- admonitions to Federal agencies to provide protection for listed and eligible Federal properties and full consideration in planning for listed and eligible nonfederal properties which could be affected by the agencies' actions;
- authorization of grants-in-aid, loan insurance, and tax incentives for use, rehabilitation, and protection of listed private properties; and
- establishment of procedures to assure that the effects on listed and eligible properties of federal and federally funded or licensed actions are considered (especially the NHPA § 106 process).

The Act also established the Advisory Council on Historic Preservation as "an independent agency of the United States Government." (NHPA § 201). The

Council's duties are purely advisory or hortatory in nature. As described in NHPA § 202(a), the Council is directed to:

> (1) advise the President and Congress on matters relating to historic preservation, recommend measures to coordinate activities of Federal, State, and local agencies and private institutions and individuals relating to historic preservation; and advise on the dissemination of information pertaining to such activities;
>
> (2) encourage, in cooperation with the National Trust for Historic Preservation and appropriate private agencies, public interest and participation in historic preservation;
>
> (3) recommend the conduct of studies in such areas as the adequacy of legislative and administrative statutes and regulations pertaining to historic preservation activities of State and local governments and the effects of tax policies at all levels of government on historic preservation;
>
> (4) advise as to guidelines for the assistance of State and local governments in drafting legislation relating to historic preservation;
>
> (5) encourage, in cooperation with appropriate public and private agencies and institutions, training and education in the field of historic preservation;
>
> (6) review the policies and programs of Federal agencies and recommend to such agencies methods to improve the effectiveness, coordination, and consistency of those policies and programs with the policies and programs carried out under this Act; and
>
> (7) inform and educate Federal agencies, State and local governments, Indian tribes, and other nations

> and international organizations and private groups and individuals as to the Council's authorized activities.

(Emphasis added.)

This advisory, non-regulatory role for the Council is amplified further in NHPA § 106 which states:

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

(Emphasis added.)

This provision establishes what is popularly known as the "Section 106 process," which authorizes the Council to "comment" to the head of any Federal agency concerning the "effect" of certain defined Federal "undertakings" "on any district, site, building, structure, or object that is included in or eligible for inclusion in the National Register [of Historic Places]."

Amazingly, this very limited authorization to "comment" on certain undertakings has evolved over the years into a remarkably bureaucratic and labyrinthine regulatory process. While that process may be well-intentioned, the

result is an enormously complex web of time-consuming and costly reviews, consultations, and other procedures contained in the Advisory Council's existing so-called Part 800 regulations -- a web the Council spins from the one thin strand of its authority to "comment." NMA objects vigorously to the Section 106 Process as it exists today. That Process must be overhauled to return it to the truly advisory process Congress intended to establish when NHPA was enacted.

Independence Mining Company has been caught up in the web of the existing Part 800 regulations in our efforts to expand our operations at Cripple Creek and Victor Gold Mining Company. Although 99% of the land on which the mine is situated is private, nevertheless, within the 552 acres to be disturbed lie 47 minuscule slivers of Federal land administered by the Bureau of Land Management ("BLM"). We had already obtained our permit from the State of Colorado and were ready to begin construction when we were informed by BLM, after initial minimal interest, that federal permitting would be required too. Furthermore, federal permitting -- as minor as it is -- could not be completed until the entire mine site was surveyed for historic properties under NHPA § 106.

Worse, we were informed that unless we were willing to pay the costs for the survey and sign a "Programmatic Agreement" to that effect with BLM, the Colorado State Historic Preservation Officer ("SHPO") and the Advisory Council on Historic Preservation, the survey might not be completed for up to seven years. The Programmatic Agreement, by the way, is not authorized by any provision of

NHPA. It is a creation of the Part 800 regulations. We do not believe that our planned activities on the slivers of Federal land are "undertakings" pursuant to NHPA § 106. Rather than engage in a protracted fight with BLM, however, we signed the Agreement, hired the consultant recommended by BLM, and watched more than 50 archaeologists fan out across our property. They proceeded to survey not only properties placed on, or determined to be eligible for placement on, the National Register, but also every single structure or feature (including every outhouse pit and exploration ditch) older than 50 years. BLM even insisted on the autopsy of the skeletal remains of a horse because it might provide insight into how the horse died.

We had budgeted $835.000 for the survey, and ended up spending almost $3 million (5% of project costs) to complete it -- and we incurred more than triple that amount in project delays due solely to the time taken by BLM, the SHPO, and the Advisory Council to provide § 106 clearances for each new land disturbing activity during the construction process. Thus, a total of approximately 20% of all project costs went solely to meet historic preservation imperatives. This is not the end because we are still involved in "mitigation costs" for any unsurveyed historic or archaeological resources discovered during mining and final report writing summarizing the features discovered during the initial survey.

All of this rests on the thin reed of BLM "tak[ing] into account the effect" of our project on historic preservation values and "afford[ing] the Council . . . a reasonable opportunity to comment . . . ."

As if the existing Part 800 regulations were not onerous enough, the Advisory Council, in October 1994, published a new proposed Part 800 in the Federal Register. This proposal was so egregious that a firestorm of controversy broke out.

We voiced concern that, despite the clear thrust of NHPA § 106, the proposed regulations would improperly and unlawfully transform NHPA's requirements from procedural to substantive, and turn the Advisory Council into a historic preservation policeman enforcing these newly transmuted substantive requirements.

Mr. Chairman, in a February 16 letter that you and Representatives Allard and Vucanovich sent to the Advisory Council, you and your colleagues stated:

> [I]t is our conclusion that this proposed rule should be withdrawn, rewritten and re-issued in draft for additional public comment. Simply stated, it is unacceptable to us that any agency would propose burdensome new regulations on our already over-regulated society, particularly when those regulations exceed the authority of the underlying statute.
>
> * * *
>
> The statement in your Impact Analysis that 'The Council's regulations in their current and revised form, only impose obligations on Federal agencies' leads us to wonder if you really understand the scope and effect of

> your own regulations. Compliance with the National Historic Preservation Act is already costing both government and the private sectors tens of millions of dollars annually. The cumulative impact of your proposed rule, including such newly, articulated policies as requiring that destruction of historic properties always be the 'last resort,' is that the cost of compliance will increase substantially. Under your proposed regulations, Federal agencies will have every incentive to pass increased costs on to an already overburdened private sector and little incentive to reduce overall regulation costs.
>
> * * *
>
> Two other aspects of your proposed regulations, which are particularly troublesome, are the open-ended timeframes and unlimited public standing. While it is a concept largely foreign to most Federal regulatory agencies, time is money to the private sector.

Mr. Chairman, we agree with your letter. And apparently the Advisory Council does too because the October 1994 proposal seems to have been discarded and replaced by a July 20, 1995, Informal Discussion Draft. The Council, we understand, plans to publish a new notice of proposed rulemaking in the Federal Register at some future date based on the Discussion Draft and the comments generated by it.

Indeed, the Discussion Draft is an improvement over the October 1994 proposal, and we are pleased that many of the changes we recommended in our prior comments have been adopted. Candidly, however, the 1994 proposal was so severely flawed, both substantively and procedurally, that virtually any moderation of its provisions would be an improvement. Regrettably, however, the

Discussion Draft merely tinkers with the existing, highly bureaucratic and complex regulatory regime, and thus will continue to foster inefficiency and waste in the public sector and impose unnecessary and costly burdens on the private sector. We respectfully suggest that the essential goal for the Council is to refocus the forthcoming rulemaking to respond to the new reality facing any Federal agency -- that is, to reexamine its statutory mission and to reevaluate how best to fulfill that mission in an era where the role and costs of the Federal government are being scrutinized and reduced. Fine tuning of the status quo will fail.

Nowhere is that message articulated more clearly than in the Reports of this House and your Senate colleagues on H.R. 1977, the fiscal year 1996 Department of the Interior and Related Agencies Appropriations legislation. The House Report stated:

> The National Historic Preservation Act of 1966 established the Advisory Council on Historic Preservation. Its mandate is to further the national policy of preserving historic and cultural resources for the benefit of present and future generations. The Council advises the President and Congress on preservation matters and provides consultation on historic properties threatened by Federal action.
>
> * * *
>
> The Council has no authority to unilaterally alter Federal actions that will affect historic properties nor [can] it impose solutions on non-Federal parties. Its function [is] purely advisory.

H.R. Rep. No. 104-173, 104th Congress, 1st Sess. 109-110 (1995). (Emphasis added.)

Similarly, the Senate Appropriations Committee, in its Report accompanying H.R. 1977, stated:

> The Advisory Council on Historic Preservation provides review, coordination, mediation, education, and advice on historic preservation matters. It does not have responsibility for designating historic properties, providing financial assistance, overriding other Federal agencies' decisions, or controlling actions taken by property actions [sic]. The Advisory Council works closely with Federal agencies and State historic preservation officers. The Committee is concerned that some of the Advisory Council's work is duplicative of preservation activities conducted by other entities.

S. Rep. No. 104-125, 104th Cong., 1st Sess. 104 (1995). (Emphasis added.)

NMA believes that this Congress has spoken strongly and clearly to the Advisory Council. We hope that the Council (as well as federal agencies, SHPOs and other governmental entities) are listening. Today's hearing provides another opportunity for Congressional instructions to be delivered and heard. Since NHPA § 212 requires funding for the Council to be reauthorized before the end of FY 1996, we urge that Congress not enact simple reauthorization, but rather take that opportunity to correct some of the Council's misconceptions about its role.

For example, we urge that the Congress make certain that the Council understands its role is only advisory and that the Council's regulations must be revised accordingly. Congress should reinforce that the Council only has a

responsibility to consult and not to oversee federal agency historic preservation programs. NHPA § 106 should be reformed to ensure that it only provides a procedure to "take into account" historic resources, not substantive requirements that place the burden and cost of preservation on private parties. Furthermore, the definition of "undertaking" contained in NHPA § 301 must be clarified to show that the degree of federal involvement must be significant before the Section 106 Process applies.

The best way to make these corrections is through remedial legislation. Recognizing that legislative days are growing short, however, perhaps the best result for now should be a simple one-year reauthorization for the Council. If this is all that can be done this year, we urge the Subcommittee to reaffirm the views expressed in the House and Senate appropriations bill reports mentioned previously. Furthermore, we respectfully request that the Subcommittee make historic preservation law reform a priority for the next Congress. In either event, we would be pleased to suggest to this Subcommittee those revisions to the current statutory language which we believe will achieve the objectives described in the House Appropriations and Senate Appropriations Committee Reports.

Thank you for allowing me the opportunity to present the views of the mining industry to you. With the Subcommittee's permission, we would like to augment this statement for the record. In the meantime, I will be happy to answer any questions you may have.

Testimony of
Nancie G. Marzulla
President and Chief Legal Counsel
of Defenders of Property Rights
Before House Committee on Resources
Subcommittee on National Parks, Forests & Land

March 20, 1996

Mr. Chairman and Members of the Committee:

Thank you for inviting me to appear before this Subcommittee oversight hearing on historic preservation to discuss the vital need for reform of the Historic Preservation Act.

I serve as President of Defenders of Property Rights, the nation's only nonprofit legal defense foundation dedicated exclusively to the protection of constitutionally-guaranteed property rights. Through a program of litigation, education and legislative support, Defenders seeks to realize the promise of the Bill of Rights of the United States Constitution that private property shall not be "taken for public use, without just compensation." Defenders has a large national membership representative of the property owners, users and beneficiaries of the rights protected by the Constitution and traditional Anglo-American property law. Founded in 1991, Defenders has since then participated in every landmark property right case in recent years, including *Lucas v. South Carolina Coastal Council,* 505 U.S. 1003 (1992) and *Dolan v. Cty of Tigard*, 114 S.Ct. 2309 (1994), Defenders has also participated in state cases involving a constitutional challenge to the designation of private property as historic, notably, *United Artists' Theater Circuit, Inc. v. City of Philadelphia,* 635 A.2d 612 (Pa. 1993). Finally, Defenders has also devoted a significant amount of resources to analyzing legislative proposals concerning property rights at both the state and federal levels, including pending legislation regarding the creation of National Heritage Areas.

Despite the fact that the United States Constitution imposes a duty on the government to protect private property rights, in reality, they are often trammeled by even well-intended statutory schemes. But as reflected in various provisions in the Constitution, the Founding Fathers clearly

recognized the need for vigorously protected property rights -- even when the government's intentions were good. As explained by Justice Holmes in *Pennsylvania Coal v. Mahon*, 260 U.S. 393, 416 (1922): "[A] strong public desire to improve the public condition is not enough to warrant achieving the desire by a shorter cut than the constitutional way of paying for the change." This is because the Founding Fathers understood the vital relationship between private property rights, individual rights and economic liberty. As Justice Story wrote so eloquently: "[I]n a free government, almost all other rights would become worthless if the government possessed an uncontrollable power over the private fortune of every citizen." Joseph Story, *Commentary on the Constitutional of the United States*, para. 1790 (1833); *see also* The Federalist No. 10 (James Madison).

Today, government regulations destroy property rights on an unprecedented scale. Regulations designed to protect coastal zone areas, wetlands and endangered species habitats, and programs to protect historic sites and the national landmarks, among others, leave many owners stripped of all but bare title to their property. In recent years, however, courts have done much to restore vigor to the Fifth Amendment. For instance, in *Nollan v. California Coastal Commission*, 483 U.S. 825 (1987), the Supreme Court ruled that a land use regulation will be upheld only when it (1) serves a legitimate state interest; and (2) does not deny an owner "economically viable use of his land." Similarly, in *Lucas v. South Carolina Coastal Council*, 505 U.S. 1003 (1992), the Supreme Court held that denying an owner all economically beneficial and productive use of his land requires payment of compensation unless the prohibited use constitutes a public nuisance as defined and understood by background principles of common law. Finally, in *Dolan v. City of Tigard*, 114 S.Ct. 2309 (1994), the Supreme Court held that conditions imposed upon the reasonable use of land must be "roughly proportional" to the burden they purport to address.

Nevertheless, cases in which land owners possess the resources and perseverance to prevail against a massive federal government are few and far between. Landowners are increasingly being deprived of most, if not all, economically beneficial uses of their land by government action and regulation. The Founding Fathers' intent for private property to be

protected was clear. They could never have envisioned, however, the growth of a leviathan government which has occurred of late years. If the Fifth Amendment is going to be worth more than the paper it is written on, private property protection must be strengthened. The Historic Preservation Act should be conformed to the requirements of the Bill of Rights.

I. The United States Constitution imposes a duty on government to protect private property rights because property rights are an essential element of a free society.

Within the Constitution numerous provisions directly or indirectly protect private property rights. The Fourth Amendment protects against unreasonable searches and seizures. The Fifth Amendment states that no person shall "be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation." The Fourteenth Amendment echoes the Due Process Clause, stating that no "State shall deprive any person of life, liberty, or property without due process of law..." Indirectly, the Contracts Clause protects property by forbidding any state from passing any "law impairing the Obligation of Contracts." U.S. CONST. art. 1, § 10.

The reason why the Constitution places such strong emphasis on protecting private property rights is because the right to own and use property is critical to the maintenance of a free society. Properly understood, property is more than land. Property is buildings, machines, retirement funds, savings accounts and even ideas. In short, property is the fruits of one's labors. The ability to use, enjoy and exclusively possess the fruits of one's own labors is the basis for a society which individuals are free from oppression. Indeed, there can be no true freedom for anyone if people are dependent upon the state (or an overreaching bureaucracy) for food, shelter and other basic needs. Where the fruits of your labors are owned by the state and not by you, nothing is safe from being taken by a majority or a tyrant. As a government dependent, the individual is ultimately powerless to oppose any infringement of his rights (much less degradation of the environment) because the government has total control over them. People's livelihoods, possibly even their lives, can be destroyed at the whim of the state.

One of the most eloquent commentators on the relationship between freedom and property rights was Noah Webster. The noted American educator and linguist said: "Let the people have property and they will have power -- a power that will forever be exerted to prevent the restriction of the press, the abolition of trial by jury, or the abridgment of many other privileges." Not surprisingly, the world's greatest oppressors have also understood the intrinsic link between property rights and freedom. As Karl Marx explained in the Communist Manifesto: "You reproach us with planning to do away with your property. Precisely, that is just what we propose... The theory of the Communists may be summed up in a single sentence: Abolition of private property."

II. Courts alone cannot adequately protect private property rights -- legislation must be drafted from the outset to protect private property rights.

In 1922, Justice Oliver Wendell Holmes declared that a regulation that went too far would be recognized as an unconstitutional taking of private property. *Pennsylvania Coal Co. v. Mahon*, 260 U.S. 393 (1922). Since that time, courts have struggled with the question of when a regulation does, in fact, go too far. There has been no clear articulation of when the exercise of regulatory authority will violate the Just Compensation Clause. In 1978, after surveying fifty years of takings jurisprudence, Justice William Brennan threw up his hands in dismay and declared, "This Court, quite simply, has been unable to develop any 'set formula' for determining when 'justice and fairness' require that economic injuries caused by public action be compensated by the government, rather than remain disproportionately concentrated on a few persons." *Penn Central Transp. Co. v. New York City*, 438 U.S. 124 (1978). Justice Brennan then identified three factors which still guide courts in determining whether the Fifth Amendment has been violated: (1) the character of the government's action; (2) the reasonableness of the owner's investment-backed expectations; and, (3) the economic impact of the regulation.

Since 1978, the court has identified at least three areas which also constitute *per se* violations of the Fifth Amendment. In *Hodel v. Irving*, 481 U.S. 704 (1987), the Supreme Court held that destruction of the right to devise private property violates the Fifth Amendment. In

Nollan v. California Coastal Commission , 483 U.S. 825 (1987), the Supreme Court determined that a property regulation which does not substantially advance its avowed governmental purpose also constitutes a taking. In 1992, in *Lucas v. South Carolina Coastal Council*, 505 U.S. 1003 (1992), the Supreme Court held that destruction of all productive and beneficial uses of private property violated the Fifth Amendment.

Despite these efforts by courts to flesh out Fifth Amendment guarantees, there are still many open questions in takings jurisprudence. Indeed, the most troublesome question is the one posed in 1922 - determining when a regulation "goes too far."

III. Takings litigation today is a long, expensive and arduous process which only the most well-financed and dedicated property owner can endure.

The scales of justice are unfairly tipped in favor of the government when citizens are faced with the threat of losing their property due to regulatory burdens. Not only are the laws drafted to ease the litigation burden of the government, but the costs of takings litigation can range in the hundreds of thousands or even millions of dollars, too high for the average citizen to bear. Consequently, many citizens faced with a government takings claim cannot pursue their rights under the Fifth Amendment. The government, on the other hand, does not face a similar shortage of resources (at least, in comparison to the individual property owner), and can often pursue a vigorous defense of the case without constraint. Adding to the hardship, procedural hurdles often bar litigation on the merits of takings claims for anywhere from five to ten years, or longer!

A few examples of reported cases demonstrate how arduous and interminable the litigation of takings claims against the federal government can be:

On October 2, 1980, Florida Rock Industries was denied a wetlands permit to mine limestone on its property in southern Florida. In 1982, the company filed suit against the federal government, alleging an unconstitutional taking. Following a 1985 judgment in the company's favor, the government appealed, and the case was reversed. In 1990, following another trial, the plaintiff won again, and the government appealed. Again, the case was reversed in 1994, and is

now pending yet a third trial. More than fourteen years after the original permit denial, the company is still waiting to be paid for the taking.

In 1983, the Federal Government placed groundwater monitoring wells on land owned by Mr. Hendler in southern California, and issued various orders forbidding certain uses of the property. In September of 1984, Hendler filed suit against the federal government, alleging a taking. After five years of bitter litigation, the case was dismissed in December 1989. Hendler appealed, and the case was reversed by the Court of Federal Appeals in the summer of 1991. The matter is now set for trial in 1995, more than twelve years after the government first physically invaded Hendler's property.

In January 1979, Whitney Benefits Corporation was denied a permit to mine coal on land it owned in Wyoming. The company filed suit in the U.S. Court of Federal Claims in August 1983, and the case was dismissed the next year. In January 1985 the Court of Appeals reversed the dismissal and, following several years of litigation, the trial court entered judgment in favor of the plaintiff in October 1989. That judgment was affirmed in 1991, but has been followed by four more years of motions. Thus, more than sixteen years after the permit denial, Whitney Benefits has not still yet received payment for the taking.

In May of 1982, Loveladies Harbor Inc. was denied a wetlands permit to develop property it owned in New Jersey, and filed suit in the Claims Court in April 1983. After extensive litigation in both the Federal District Court and the Claims Court, the plaintiff was awarded judgment in 1990. The government appealed, then moved to dismiss that appeal. Finally, in 1994, the Court of Appeals for the Federal Circuit affirmed the judgment for plaintiff - more than twelve years after the original permit denial.

24-568 O - 96 - 5

IV. Protection of private property rights need not be the enemy of achieving important social objectives.

Legal and economic scholars have long argued that private property owners protect their property with greater vigor than the government. After all, it is the value of their property that will be diminished if the property is damaged. Individuals, guided by free market incentives, are often better stewards of natural resources than the heavy hand of government. Nevertheless, there are instances in which the government will act to protect historical resources by regulating private property. The purpose of the Just Compensation Clause is not to stop government from acting, but rather to avoid individual property owners from being singled out to pay the costs of achieving social good. In protecting our historical resources, we need to make sure that the Fifth Amendment's mandate -- that if society as a whole benefits from government actions, then society as a whole should pay -- be complied with.

We have heard the government regulators argue that requiring compensation for takings will prohibit the government from protecting all the resources that should be protected. Economically speaking, the Just Compensation Clause ensures that only property worth the cost of protecting will be regulated by requiring compensation for takings, the government is forced to weigh the costs and benefits of its regulatory schemes. The Just Compensation Clause thus protects property owners and resources we want protected. Property owners are protected from arbitrary government regulations that destroy the economic viability of their land. Government is protected because the Clause will slow the government from taking too much land, thus destroying the productive forces of the economy that finance government. The best stewards of land, the owners, will have the proper incentives to guard and defend it from destruction with more intensity than any government bureaucrat or agency. Since no one has the right to use his property in a manner which would injure the public, those uses of private property which are public nuisances can be freely prohibited by the government. Finally, those areas deemed by society worthy of the

investment of resources to protect, or which private incentives fail to protect, can be preserved with limited and targeted regulation.

V. Specific Recommendations for Conforming the Historic Preservation Act with the Constitutional Requirements of Protecting Private Property Rights:

A. Designation of Historic Sites Should Be Truly Voluntary.

The present listing process purports to be voluntary. 36 C.F.R. 360.6 (s). However, in reality, private property can for all practical purposes be designated without the consent, indeed, without even the knowledge of the property owner. This is accomplished by the fact that under the current Act, a property owner need not consent to having his property listed as "eligible" for designation. Yet, under the Act's current interpretation, an eligibility listing has the same consequences on the use and enjoyment of private property as does the actual listing of the property.

Namely, once a property is eligible for listing, any proposed undertaking on the property must be reviewed by the Advisory Council to determine whether the undertaking will "damage" the "integrity" of the site. 16 U.S.C. § 470 (f). Thus, whether or not the landowner has consented to the designation, he still is subject to the same delays and costs and loss of rights as he would be if his property were listed. Thus, the Act should be amended to preclude any action by the Advisory Council relating to any property tat is not in fact "listed" as historic.

B. Designation Criteria Should Be Amended to Insure That Only Structures or Artifacts of Historic Significance Are In Fact Listed.

The Historic Preservation Act itself states that only "historic buildings and objects of national significance" are to be listed. 16 U.S.C. § 416. As presently interpreted, however, the Historic Preservation Act allows for vast expanses of land to be designated as "historic" even when there is no clearly demonstrative historical underpinning for the designation.

Notably, 235 square miles on Mount Shasta in California were proposed for listing, even though not a single structure or artifact in the area could be pointed to as having historic significance. Such an expansive listing -- on such vague grounds (area identified only as having

some spiritual significance to Native Americans) -- flies in the face of language that clearly defines historic designations. Moreover, when expansive tracts of privately owned land are designated (even if a historic connection can be shown for the designation, but especially if there is no clear historical premise for the designation) -- without the voluntary consent of the owner and where all or substantially all of the beneficial and productive use of the land is thereby destroyed -- clearly the Fifth Amendment is implicated. Indeed, it is reported that in 1993 the National Trust for Historic Preservation placed the entire state of Vermont on its list of "America's Most Endangered Historic Places." Thus, amending the Act to limit its application to only buildings or sites clearly historic would go far in ameliorating this constitutional concern.

C. Only exteriors of structures should be listed.

Where a designated structure is privately owned, the only arguable public interest in the building can be in maintaining the *exterior* of the building, to preserve the character of a neighborhood, for example. The present process makes no distinction between interior and exterior of structures. This puts property owners in the untenable position of owning a home or other building and not being able to make necessary renovations to continue the ongoing use of the structure.

Courts who have reviewed such designation have held that they go "too far." In *J.F. Flores, Archbishop of San Antonio v. City of Boerne*, 73 F. 3d 1352 (5th Cir. 1996), a church congregation in San Antonio battled preservationists for three years to renovate the *interior* of the church to meet the needs of the growing parish. At no time did the parish propose to alter the *exterior* of the structure or to alter the historic character of the area. Ultimately, the United States Court of Appeals for the Fifth Circuit held that the Constitution required that the parish be able to renovate its building interior as necessary. But the legal victory came only after the parish spent years and its limited resources battling overreaching preservationists.

Likewise, with respect to the Boyd Theater in Philadelphia, Pennsylvania, the Pennsylvania Supreme Court held that designation of the interior of that theater to physically

support the exterior (which had also been designated), exceeded the city's historical zoning authority. *United Artists' Theater Circuit, Inc. v. City of Philadelphia,* 635 A.2d 612 (Pa. 1993).

D. The Section 106 Review Process Should Not Be Used As A Land Use Planning or "No Growth" Tool.

One of the chief complaints we hear from property owners at Defenders of Property Rights is that all too often historic designation is used as a means of controlling growth or destroying the economic viability of the use of his property solely for aesthetic purposes. In those instances, the historic designation of one's property can leave the property owner with a "white elephant" which he must care for and maintain (at his own expense) solely for the benefit of the public. Such instances clearly implicate the Fifth Amendment's Just Compensation Clause.

Under the current 106 Review Process, the use of privately owned land can be controlled -- at no expense to the government -- by the National Park Service under the auspices of the Section 106 Review process. Under Section 106, the Federal Advisory Council on Historic Preservation must determine whether a proposed federal undertaking on property in the historic area will "damage" the "integrity" of the historic site. 16 U.S.C. § 470 (f). This "106 Review" comes into play if federal funds are used in any way, or if a federal permit or license is sought by the landowner.

For example, if a property owner wishes to develop his land, and his project would entail the issuance of federal bonds or federal funds to upgrade the roads to the property, a "106 Review" would be triggered. This review, unfortunately, can take years to complete. In the meantime, the property owner has to delay his project and to continue paying carrying costs.

Likewise, if a property owner wishes to sell his house, any purchaser wishing to use a federal loan or even a federally-guaranteed loan must go through the "106 Review" process. Once again, the wait for loan approval can take years.

Local government proposals are also subject to the "106 Review" process. For example, in Culpepper County, Virginia, the County wished to erect a fence around the local airport to keep deer from running onto the airstrip. Because the airport is encompassed within the historic

designation, the County was forced to go through the "106 Review" process before it could build a fence. Clearly, such control of local activities implicates Tenth Amendment concerns.

To address these concerns, the 106 Review process must be balanced with interests beyond those of the preservationist community. Economic issues and private property rights interests, at a minimum, should be a mandatory part of the process.

Conclusion

We all agree that preserving the physical evidence of America's celebrated historical past. However, at the same time, we should also take care to preserve the ideas behind the buildings we seek to protect. As discussed above, the Founding Fathers strongly believed in protecting private property rights as well. Thus, any actions to preserve the artifacts and structures of our nation's heritage must also be consistent with our nation's heritage of private property rights.

I would be pleased to answer any questions that you may have.

SAA

SOCIETY FOR AMERICAN ARCHAEOLOGY

SUBCOMMITTEE ON NATIONAL PARKS FOREST AND LANDS

COMMITTEE ON RESOURCES

U.S. HOUSE OF REPRESENTATIVES

MARCH 20, 1996

OVERSIGHT HEARING ON HISTORIC PRESERVATION

TESTIMONY OF

SOCIETY FOR AMERICAN ARCHAEOLOGY
AND
SOCIETY FOR HISTORICAL ARCHAEOLOGY

PRESENTED BY
DONNA J. SEIFERT, Ph.D.
PAST PRESIDENT, SHA

24-568 62

900 Second Street NE #12 • Washington DC 20002-3557 USA • Telephone +1 202/789-8200 • Fax +1 202/789-0284

Testimony before the Subcommittee on National Parks, Forests, and Lands
Committee on Resources
U.S. House of Representatives

Mr. Chairman, the Society for American Archaeology (SAA) and the Society for Historical Archaeology (SHA) welcome this opportunity to testify before this subcommittee and wish to thank you and the committee for your support of our nation's heritage. Our two societies represent more than 7500 members dedicated to the preservation, study, and interpretation of the archaeological portion of that national heritage. Archaeological sites record more than 12,000 years of human occupation in North America; for much of that period, they are the primary or only record of our history. Even when written documents and oral traditions are available, however, the archaeological record adds unique and irreplaceable information about American history.

Congress and the American people have consistently provided strong bipartisan support for protecting and interpreting significant archaeological sites as an essential part of the nation's heritage. Landmarks in this support are the Antiquities Act of 1906, the Historic Sites Act of 1935, and the National Historic Preservation Act of 1966. Congress has revisited the 1966 act a number of times, to strengthen and improve it. Prior to the passage of the National Historic Preservation Act, the federal government was often viewed by the public as a major cause of the destruction of historic buildings, archaeological sites, and other historic places. The National Historic Preservation Act was passed, in part, as a reaction to devastating losses of historic properties that resulted from federal highway and dam construction, federally assisted urban renewal, and other federal agency programs, as they were carried out in several decades following the end of World War II. Under the National Historic Preservation Act, as amended, procedures have been put in place to ensure that historic values are considered by federal agencies as they conduct their programs. These procedures also ensure that the states and local communities have a strong voice in federal actions that might affect historic properties in their area.

A key passage in the preamble of the National Historic Preservation Act states that "the historical and cultural foundations of the nation should be preserved as a living part of our community life and development in order to give a sense of orientation to the American people." Mr. Chairman, we believe that historic preservation is important to the American people; that there is broad public support for the overall goals and procedures established by the National Historic Preservation Act; and that this support extends to archaeological sites as well as to the historic buildings and other properties that provide the tangible record of our history. As we approach the 30th anniversary of the passage of the act, it is certainly appropriate for your committee to seek ways to improve its implementation, and it is in that spirit that we will attempt to respond to the three issues you have asked us to address. SAA and SHA, often in conjunction with other organizations, such as the Society of Professional Archeologists (SOPA), have already been seeking ways to improve and make more efficient the treatment of archaeological values and properties under our national historic preservation laws. For example, an open forum focused largely on this topic was held at the SAA's national meeting in May of 1995. More recently, the SAA and SOPA hosted a working meeting entitled "Renewing Our National Archaeological

Program" at which officers of SHA and the American Cultural Resources Association (ACRA) were also represented. Many of the suggestions we make below resulted from these meetings.

Issue 1. The need for re-authorization of the Advisory Council on Historic Preservation and any necessary changes to the role and function of the Advisory Council.

SAA and SHA strongly support passage of H.R. 3031, to reauthorize funding for the Advisory Council for Historic Preservation. The council plays an essential role by promulgating regulations for Section 106 of the National Historic Preservation Act and in overseeing the implementation of this section. Section 106 is a key part of the Historic Preservation Act and one that has kept federally funded, permitted, or assisted projects relatively free of litigation over their effects on historic properties. It has also helped agencies avoid the kind of problem they experienced so frequently in the 1950s and early 1960s--discovering at construction that a project will destroy a historic property or that the importance of a property to a state, city, or ethnic group had been overlooked. Delays during construction are costly--and avoidable when appropriate research has been completed at the planning stage. Section 106 ensures that in the project planning stage, federal agencies find out what historic properties, if any, are likely to be affected by the project and what the effect will be; identify the parties likely to be concerned about these effects; and develop plans that take these interests into account and that make a reasonable effort to avoid or reduce the loss of historic values. Strong state participation in the planning process is ensured by Section 106 provisions for review of agency projects by the state historic preservation officer (SHPO). Section 106 is designed to resolve differences without litigation; it does not include any mechanisms for stopping an agency's project, but it does ensure that the agency consider historic values.

The Section 106 process can be complex: in addition to identifying historic properties and determining a project's affects on their historic values, the process requires consultation among several parties. These often include project proponents from business or industry who may feel strongly about the relative merits of the historic and economic development values. The Advisory Council plays an essential role in making this process work. For example, when an agency and a state cannot agree about a project, the council can often help resolve the dispute by acting as a third party that is unencumbered by the pressures that may affect those closer to the dispute. The council can also ensure that various interested parties--such as Native American tribes and local historical groups--are consulted and brought to the table early in the project planning stage, so that their interests are taken into account while the agency is formulating its plan. Most important, however, are the council's functions in (1) promulgating regulations for Section 106 and (2) providing guidance for agencies, the states, and interested parties in implementing this section of the law. The council's regulations and guidelines can allow flexibility for states and agencies, yet ensure a substantial degree of uniformity in projects from one state or agency to the next. Maintaining appropriate uniformity and predictability is

especially important for businesses such as pipeline or energy development companies that seek federal permits in a number of states and from several agencies.

Although we strongly support continuing the council's role in promulgating the regulations for Section 106 and in providing both oversight and guidance for its implementation, we recommend that the council substantially reduce its case-by-case involvement in agency actions. This will simplify and expedite the Section 106 process in these cases. We recommend that the Advisory Council shift direct resources toward the following objectives:

1. Work with SHPOs to develop programmatic agreements that allow agencies to comply with Section 106 on commonly encountered projects or property types without involving the council.

2. Develop guidance documents that will assist agencies in carrying out their Section 106 responsibilities more effectively and efficiently.

3. Conduct periodic reviews of agency activities carried out under programmatic agreements.

Issues 2. Suggestions for streamlining the Section 106 review process.

The basic principles underlying the Section 106 process are sound, but we believe that the procedures for applying the process to archaeological resources need to be made more efficient and effective. Amendments to the National Historic Preservation Act are not required; needed improvements can be made through changes in agency and SHPO practices and in regulations. We offer the following recommendations, which are based on a series of discussions among archeologists who work with the process.

1. To the extent feasible, make decisions regarding the treatment of archaeological properties on a programmatic rather than a project-by-project level.

2. Establish realistic but firm timelines for all parts of Section 106 review, so that project schedules can be predictable.

3. To avoid duplicative effort, take into account what has been learned from previous archaeological investigations when making decisions regarding survey, evaluation, and mitigations. Use advisory panels of experienced archaeologists to provide the background information and perspectives needed to improve management decision-making. Additional funds need to be provided to states and agencies so they can prepare focused syntheses of previous work and upgrade existing databases.

4. Agencies must proactively seek the views of Native Americans and other interested parties early in the Section 106 process.

5. Ensure that those charged with implementing Section 106 for archaeological properties have adequate training and experience. We recommend that such personnel in federal agencies and state historic preservation offices meet the Secretary of the Interior's standards. Appropriate training and experience will enhance efficiency and sound decision-making (as described in 6 below).

6. Focus decision-making regarding archaeological properties under Section 106 on desirable outcomes rather than just on process. Avoid simplistic approaches and exploit the flexibility available within the Section 106 regulations to achieve creative solutions to preservation problems.

7. Commit an increased proportion of the time and money spent on archaeology under Section 106 to disseminating the substantive results to the general public.

8. Employ peer review more frequently as a means of quality control, particularly with regard to large-scale date-recovery projects and major programmatic agreements.

9. Federal agencies and state historic preservation officers must understand and accept responsibility for the different roles they are assigned under the law.

Issue 3. Comments on the process for listing properties on the National Register of Historic Places.

Archaeological properties cannot be considered for listing on the National Register unless they are known, and significant archaeological sites are often difficult to see because the artifacts, cultural features, dating evidence, and other materials they contain are buried or obscured by vegetation or later construction. Therefore, systematic survey and subsurface testing is usually required to locate archaeological sites before they can be evaluated for National Register eligibility. In many cases, agencies must identify and evaluate archaeological sites as part of Section 106 compliance, because they have not received the funding necessary to complete--in advance--the inventories called for in Section 110 of the National Historic Preservation Act. This section of the act also requires agencies to work to preserve properties that are not under their direct control but which may be affected by agency actions. For both reasons, agencies will need to continue to do archaeological identification and assessment and to evaluate sites for National Register eligibility, as part of the Section 106 process, while continuing more comprehensive efforts under Section 110.

The National Register criteria are general and must be applied critically and intelligently to ensure that the properties determined eligible for the National Register are significant. The most important step is determining National Register eligibility by carefully applying the National Register criteria. Whether eligible sites should actually be listed on the Register is a separate question; for many archaeological sites, the public benefit comes from the story they can tell, rather than from their ability to communicate historical values directly to a visitor.

We offer the following additional recommendations:

1. The National Register and Advisory Council should work together to update and improve detailed guidance on application of the National Register criteria to archaeological sites and districts. This guidance should be designed to help archaeologists and agency personnel make better informed and more discriminating judgments about the eligibility of archaeological properties. Training needs to be available to assist agency and SHPO staff in appropriately following such guidance.

2. Archaeological sites often are evaluated only in relation to National Register criterion D (property has yielded, or is likely to yield, information important in prehistory or history); such sites should more frequently be evaluated against the other National Register criteria, especially criterion A (property is associated with events that have made a significant contribution to the broad patterns of our history).

3. Historic buildings are commonly evaluated with respect to National Register criteria A, B, and C, but not D, even though many of them have significant information potential embodied in associated archaeological remains and deposits; we recommend that historic buildings be evaluated for their archaeological information potential where appropriate.

Mr. Chairman, we hope that you and the committee find these observations and recommendations useful. Our societies are committed to addressing the difficult issues involved in streamlining applications of our historic preservation laws while ensuring appropriate management of our archaeological resources for the benefit of all Americans. We will continue our discussions among archeologists in federal agencies, state historic preservation offices, consulting firms, and the academy. Please do not hesitate to call on us if we can offer further assistance.



National Trust for Historic Preservation

1785 Massachusetts Avenue, N.W.
Washington, D.C. 20036
(202) 673-4000 / FAX (202) 673-4038 / TTY (202) 673-4200

Statement of Edward M. Norton, Jr.
Vice-President for Public Policy
National Trust for Historic Preservation
before the Subcommittee on National Parks, Forests, and Lands
House Resources Committee
March 20, 1996

Mr. Chairman, members of the subcommittee, thank you for the opportunity to appear today to testify on key aspects of the federal historic preservation program. The National Trust for Historic Preservation is a non-profit organization with more than 265,000 members, chartered by Congress to promote public participation and education in historic preservation and to engage the private sector in preserving our nation's heritage. As the leader of the national preservation movement, the National Trust is committed to saving America's diverse historic resources and to preserving and revitalizing communities nationwide. We have been asked to testify on the reauthorization of the Advisory Council for Historic Preservation, as well as its role and function: on Section 106 of the National Historic Preservation Act; and the process for listing properties on the National Register of Historic Places.

We will submit, for the record, prepared testimony which provides the National Trust's views on H.R. 563, legislation to amend the National Historic Preservation Act to prohibit inclusion of certain sites on the National Register.

Advisory Council on Historic Preservation and the Section 106 Process

The National Trust enthusiastically supports the reauthorization of the Advisory Council on Historic Preservation. We believe that the Advisory Council plays a critical, unduplicated role in the federal preservation program, and we urge Congress to pass legislation promptly to ensure the Council can continue to execute its responsibilities under the National Historic Preservation Act.

The Advisory Council provides a forum for federal agencies to come together with state and local officials, along with historic preservation experts and citizens, in order to balance federal historic preservation policy and other agency needs and policies. As an independent

The mission of the National Trust for Historic Preservation is to foster an appreciation of the diverse character and meaning of our American cultural heritage and to preserve and revitalize the livability of our communities by leading the nation in saving America's historic environments.

federal agency, the Council has the credibility and objectivity to resolve potential conflicts between federal projects and historic properties. Six different federal agencies and the Architect of the Capitol are directly represented on the Advisory Council, as well as a governor, a mayor, and a state historic preservation officer. The balance of the membership consists of professional preservationists and at-large members of the general public.

Through the Section 106 process, the Advisory Council ensures that citizens have the opportunity to comment on and participate in efforts to minimize the impact of federal actions on historic sites. Private property owners can do anything they wish with their property--including demolition--subject to local land use controls, provided that no federal license, permit, or funding is involved. When there is federal involvement, the appropriate federal agency is responsible, under Section 106 of the National Historic Preservation Act, for giving the Advisory Council on Historic Preservation an opportunity to comment on the project and its effects to ensure that historic and archaeological properties are considered in the federal planning process.

The Advisory Council is frequently the only forum, and Section 106 the only process, available to help communities that are seeking to protect their private property rights, and the property values supported by historic designations, when those property values are threatened by federal agency actions. For example, thousands of residents in the southern California communities of Pasadena, South Pasadena, and El Sereno have lived for thirty years with the threat that their neighborhoods might be devastated for the sake of the 710 Freeway, which would destroy more than 1,000 homes and parts of five historic districts, and in the process displace more than 3,000 people. The Advisory Council has been the leading defender of property rights for these homeowners, many of whom would lose their homes to the bulldozer without the Council's leadership. The Council has accomplished this, not by regulatory prohibitions, but by using the power of persuasion, bringing pressure to bear on federal transportation officials through existing dispute resolution procedures, and urging them to reconsider historic resources and avoidance alternatives that were previously ignored by highway planners.

When Congress created the Advisory Council in 1966, it envisioned the Council as precisely this kind of negotiating and conflict resolution forum for high level federal officials who would look for ways to mitigate or avoid the impact of a few, large federal projects. Originally an agency of the Department of the Interior, Congress granted the Council independent status to ensure that citizens and governmental entities would have access to an unbiased referee in assessing the impact of federal undertakings on historic resources. In the past 30 years, the Advisory Council has developed an extraordinarily successful track record in helping communities and states address the challenges to historic resources posed by federal projects of all kinds. Its own statistics show, in the Council's annual report to Congress, that the Section 106 process has more than a 99 percent success rate. The Council is involved in approximately 2,000-3,000 cases per year, and only one half of one percent of those projects involved problems or conflicts that could not be resolved by the Section 106 process--either the Advisory Council and the agency could not agree on the project, or the agency sought the

Council's views after the project had already caused irreparable harm.

At the same time, hundreds of federal undertakings each year (between 500-700) are modified in a way that actually reduces or mitigates their impact on historic properties. This project modification is achieved by consensus and agreement among the agencies, states, and applicants, as a direct result of the Section 106 process. Very few federal agencies can point to such an outstanding record of success.

In Butte, Montana, for example, the Advisory Council successfully negotiated a Programmatic Agreement with the local governments, the Environmental Protection Agency, the Montana state historic preservation office, and the mining industry for the application of EPA Superfund procedures in the clean up of Butte and Anaconda-Deerlodge, an area polluted by more than 100 years of open pit and other mining activities. The parties developed a phased approach to integrate cleanup work with ongoing efforts to develop the area into a tourist destination and take advantage of opportunities to interpret its rich heritage. The result is a plan that will respect the past through history-oriented interpretive and recreational opportunities while making a valuable contribution to the local economy.

In another example, Diamond Shamrock Enterprises (DSE) planned to install a 10-inch gasoline product pipeline across a 500-mile area of southeastern New Mexico and west Texas. About 100 miles of the pipeline were to traverse land under the jurisdiction of Bureau of Land Management. DSE was eager to begin construction in February 1995, so that the pipeline could be laid before local farmers had to prepare their fields for spring planting. During January 1995 the Council, the New Mexico SHPO, representatives of BLM, and DSE met to draft a Programmatic Agreement and a monitoring and avoidance plan for any significant archaeological properties that might be encountered during pipeline right-of-way preparation and construction. The PA was signed on February 17, 1995, allowing DSE to begin construction as planned three days later.

The Council faces a number of challenges in its work, which are primarily due to federal funding constraints. Its workload has increased while its staff and financial resources have shrunk. Last week, the National Trust testified before the Subcommittee on Interior and Related Agencies of the House Appropriations Committee on funding for the historic preservation program. We asked that the Advisory Council be funded at $3 million for Fiscal Year 1997, which would restore a $500,000 cut the Council received in its FY96 funding from the FY95 level. At 3,000 cases per year, the Council expends approximately $1,500 per case to ensure that the values of historic resources are considered. We think this is a tremendous bargain for the American people.

At the same time that Congress cut the Council's funding, there have been calls from some segments for a Section 106 process that works more quickly to achieve closure on federal permit applications and provides industry and others with a earlier indication of the outcome of historic preservation reviews. We urge that public involvement not be sacrificed in the rush to

"streamline" federal procedures, including the Section 106 review process.

The National Trust recognizes that delays and frustrations occasionally accompany the Section 106 process. But we believe that this is often the consequence of federal agencies' failure to take seriously their Section 106 responsibilities. Unfortunately, federal agencies often treat the Section 106 review process as an afterthought once they have completed work on an environmental impact statement (EIS). This foot-dragging not only sets up historic preservation as a scapegoat for delays in project approval, but it also creates the inaccurate impression that preservation concerns are wholly separate from and subordinate to environmental concerns. The Section 106 process would be more efficient and more effective if federal agencies would integrate Section 106 review with compliance under National Environmental Policy Act requirements. If the Section 106 review were undertaken as part of the NEPA process, prospective permittees would see a reduction in the costs resulting from a protracted period of federal compliance. Conducting historic preservation and archaeological surveys at the outset of the permitting process, before it is well underway, would also help to streamline the Section 106 process. In fact, the National Trust believes that Section 106 consultation should suffice for the cultural resource compliance requirements of the National Environmental Policy Act. Integrating NEPA compliance and Section 106 would benefit permittees and agencies alike.

National Register of Historic Places

The National Historic Preservation Act of 1966 authorized the Secretary of the Interior to expand and maintain a National Register of Historic Places "composed of districts, sites, buildings, and objects significant in American history, architecture, archaeology, engineering, and culture." In giving this authority to the Secretary, Congress intended that the National Register be an inclusive and dynamic--as opposed to exclusive and static--list of places of historical and cultural significance. The Register is specifically meant to document the diverse vernacular heritage of our nation.

Unlike National Historic Landmark (NHL) designation, which is reserved exclusively for the most nationally significant sites, the National Register is a means to weave the fabric of local and state histories into our national memory. Consistent with this goal, nominations to the National Register are most frequently made by property owners themselves and reviewed and decided upon by state historic preservation officers and certified local governments. National Register designation encourages citizens to take part in decisions about resources in their communities that warrant recognition for their significance.

The effects of National Register listing are positive, by fact and by law. Listing does not give the federal government control over private property nor does it preclude demolition of historic properties by the federal government or private or other governmental owners. Register listing confers benefits and opportunities. Owners of income-producing National Register properties may apply for federal investment tax credits for the rehabilitation of their properties.

National Register designation abides by an "owner objection" rule; if a property owner objects to a proposed National Register listing, the designation does not take place. Without listing, however, incentives are not available.

Many communities make use of "layered-funding" by combining historic preservation grants and tax incentives, which are available to National Register-listed properties, with other governmental and private resources. In Macon, Georgia, for example, the Low Income Housing Tax Credit, Community Development Block Grant funds, and private funding were leveraged by the Historic Rehabilitation Tax Credit for the development of 26 turn-of-the-century single-family homes for low and moderate income homeowners. In Salt Lake City, National Register designation of several apartment buildings triggered eligibility for the state historic rehabilitation tax credit for residential buildings.

Most importantly, historic preservation is increasingly being recognized as a critical component of a comprehensive economic development strategy. Historic district designations often protect properties from fluctuations in the market, and the creation of a historic district can be a catalyst for significant private investment. Not a single credible study has demonstrated that historic districts reduce property values. In fact, the research suggests quite the opposite. A recent study of the economic impact of preservation in Virginia noted that the property values of historic buildings and sites in communities such as Fredericksburg, Richmond, and Staunton significantly out-perform the appreciation rates of non-historic properties. In many communities, the creation of a National Register district is the trigger for a parallel local district. Local designation may protect properties from inappropriate design, scale, and zoning within the historic district and thus maintains and often enhances the value of the properties within. (Rypkema, Donovan D. The Economics of Historic Preservation: A Community Leaders Guide, National Trust for Historic Preservation, 1994)

State historic preservation offices receive hundreds of requests each year from citizens about getting their properties listed on the National Register. National Register designation, whether for a historic district or an individual site, is frequently sought by homeowners who recognize that value can accrue to their properties and, in the case of commercial historic properties, to their businesses. In Salina, Utah, the owners of a Victorian bed and breakfast sought National Register designation for their property because they believed it would lend status to their business and be a selling point for tourists choosing among places to stay. In Farmington, Utah, a neighborhood group's successful application for historic district designation led to the rehabilitation of the nearby abandoned Van Fleet Hotel for use as a dentist's office.

And to illustrate the magnitude of historic preservation as an economic engine, in 1995, the California Main Street program celebrated its 10-year anniversary of economic revitalization for historic downtowns. Since the inception of this Main Street program, 57 communities in the state have participated, generating nearly 5700 jobs and $71 million in private rehabilitation projects. Since 1980, the National Trust's Main Street program, which helps revive neglected and abandoned downtown commercial districts by providing local groups with organization,

design, economic restructuring and marketing assistance, has been active in over 1,100 communities in 40 states, creating 23,000 new businesses, 85,000 new jobs, 33,000 building rehabilitation projects, and $5.2 billion in new investment and actual physical improvements. Every dollar spent by a local Main Street organization leverages more than $27 dollars from other sources.

Mr. Chairman, this concludes my testimony. I would be happy to answer any questions from the subcommittee.

The American Cultural Resources Association

Statement for the House Committee on Resources
Subcommittee on National Parks, Forests and Lands
on the
National Historic Preservation Program

March 20, 1996
Statement of Ms. Loretta Neumann
Member, Board of Directors

Mr. Chairman, the American Cultural Resources Association (ACRA) is pleased to have the opportunity to present this testimony. We thank the committee for your long interest and support of the national historic preservation program, which helps preserve and protect the heritage of our country.

The American Cultural Resources Association was incorporated in 1995 to serve the needs of the cultural resources industry. The cultural resources industry is made up of over 1,000 firms employing over 10,000 people working in a wide variety of fields, including historic preservation, history, archaeology, architectural history, historical architecture, and landscape architecture. No other association addresses the business needs of this diverse community. Our mission is to promote the professional, ethical and business practices of cultural resources, including all of its affiliated disciplines, for the benefit of the resources, the public, and the members of the association.

Overview of ACRA and Our Preservation Experience

ACRA is a hybrid. We are not primarily an advocacy organization. Our voting membership is composed of participating firms, not individuals. Although many of us are professionals in our fields, our companies are in the for-profit business of preservation. We often work for other industries--the developers, the miners, the timber companies, the road builders. Many of us also help government agencies, at all levels, to make the process work effectively, from conducting historical research and archaeological surveys to developing plans and interpretive materials for use at museums or in parks and historical sites. We bring to you a unique perspective on the application of the National Historic Preservation Act as it works in the field, on the ground, throughout the United States.

In preparing for this hearing, I communicated with our board and many of our members. Just to give you one example, the President of ACRA is Charles (Chuck) Niquette, the owner of a consulting firm with offices in Kentucky and West Virginia. They assist businesses including mining companies and other entities in complying with government regulations such as the National Historic Preservation Act. Chuck has been in business since 1983. Since that time his firm has completed, on average, 125 projects a year that involve compliance with the National Historic Preservation Act. In all of this time, and with all of these projects, they have had only one go sour and end up in a law suit -- and that suit happened well after his firm's involvement with the project was over. "Section 106 works!" he says.

ACRA Vice President Patrick O'Bannon, a historian with a large architectural, planning, and cultural resource firm in Philadelphia, notes that his company's clients include the Department of Defense, U. S. Army Corps of Engineers, and Federal Highway Administration. He estimates that one third of the company's work involves cultural resources management and of that 95 percent is related to Section 106. In his 19 years in the profession -- working for the National Park Service, the Pennsylvania SHPO, a private developer and now as a consultant, he says he has never experienced any real problems with the process. "This is not to say that there are no differences of opinion," he notes. "But when there is trust and professionalism among the parties, the work gets done."

I am before you today both as a founding member of the Board of ACRA and as its government relations consultant. By way of background, I have a long history of involvement with the National Historic Preservation Act both personally and professionally. I live in an historic district in Washington DC that, 16 years ago, I helped get on the National Register of Historic Places and on the DC landmark list. I willingly submit my property to the restrictions that come from DC or federal law because I see it as a protection of my property rights as well as the preservation of a unique and interesting area in the nation's capital. Being on the National Register and the local landmarks list helps assure that neither my neighbors nor the DC/federal government can, without my knowledge or opportunity to comment, destroy the character of my neighborhood and thereby also lower the economic value of my home.

Professionally, I have worked since 1969 for a federal agency (the National Park Service), the Congress (the subcommittee holding this hearing today) and the private sector (my own consulting firm). I have worked on all of the amendments to the National Historic Preservation Act:

* In 1976, when the Advisory Council on Historic Preservation was made independent of the Department of the Interior and its review authorities under Section 106 of the NHPA were expanded to include properties "eligible" for the National Register, not just those formally listed.

* In 1980, when federal agency responsibilities to protect resources were clarified; standards were set for the approval of state programs; local governments were given representation on the Council and a means was established for states to certify them to participate in the program; and requirements were added to notify private property owners and give them an opportunity to concur in or object to a formal listing of their property on the National Register.

* In 1992, when, among other things, the definition of "undertaking" pursuant to Section 106 was further clarified; Indian tribes were provided representation on the Council and an opportunity to administer federal cultural resources programs; the authority was statutorily prescribed for determining the eligibility for the National Register of properties of traditional religious and cultural importance to Indian tribes and Native Hawaiians; and professional standards were required for Federal historic resource employees and contractors.

These amendments came after several years of consideration both inside and outside of the Congress about the changing needs of preservation. Currently, the cultural resources community, all aspects of it, is re-evaluating the programs with an eye to improving their efficiency and effectiveness. ACRA is participating in this effort, both through its own members and through its publications, print and electronic. I personally have reviewed several hundred messages written over the past six months with comments, criticisms and recommendations concerning the preservation program.

My remarks today attempt to synthesize many of ACRA's stated concerns and to make several recommendations for improvements, *all of which we believe should first be attempted administratively before further changes in the law are made.*

Advisory Council on Historic Preservation

The Advisory Council on Historic Preservation was created as an independent Federal agency by the National Historic Preservation Act to advise the President and Congress on national historic preservation matters and to direct the process established under Section 106 of the National Historical Preservation Act of protecting historic properties from harm by federal activities. The Council has played a significant and vital role in addressing major issues affecting archaeological resources and historic sites. It has worked hard to bring a balance between historic values and other important public needs.

Last year ACRA took the lead in fighting to save the Council, which was slated for termination by the House Appropriations Committee. We did so not merely because our livelihoods depend on it--indeed, many of our firms work exclusively or primarily outside the 106 process. We did so because we feel strongly that the Council provides a much needed function of balancing the public's interest in preservation with other compelling public and private interests. Sometimes--not always--these are competing interests. Often--although, unfortunately not always--these interests can both be served if the parties involved are willing to take the time and effort to work them out.

As ACRA Board Member Judy Robinson, an architectural historian and president of her own consulting firm notes, the Council and SHPO staffs "are practical and professional." Based on her experience, which is quite extensive, she feels that if the agencies and other parties "enter the process in good faith, then the results are good. The process is flexible and the solutions can be very creative."

Recommendation:

* **Reauthorization**. The ACHP should be reauthorized at sufficient funding levels to assure its continued operation. We therefore support H.R. 3031 which would authorize $5 million a year through the year 2002. Other than technical amendments, no other statutory changes should be made at this time.

Section 106 Process

The Council's regulations for implementing Section 106 have been in place and working well for 30 years. They are currently undergoing revisions to reflect the changes made by the 1992 Amendments to the National Historic Preservation Act, changes which we think can further improve the entire 106 process. Indeed, when problems occur, these are the exceptions rather than the rule; they stem from implementation, a failure of one or more of the consulting parties to fulfill their mandated role or from a focus on the process itself rather than on the desired solution. The Council's regulations are an exemplary tool for bringing a variety of competing interests to the table and for resolving disputes in a way that "consider" impacts to significant cultural resources, but yet does not guarantee preservation. The National Historic Preservation Act mandates that federal agencies "take into account" the effects of their undertakings on significant historic properties. It does not mandate that such sites be preserved or saved at all costs. What is needed is administrative refinement, not wholesale legislative surgery.

ACRA does **not** agree with the concept that the 106 process can be adequately handled solely by the state historic preservation offices nor, for that matter, by the National Park Service, the latter of which is itself a federal agency that has undertakings that could adversely affect historic resources. While we would concur that the Council's role in reviewing individual cases could be minimized, that, in fact, is already the practice and is likely to become even more so in the future as the new regulations are put in place. We need, however, the safety valve that the Council provides for parties in highly contentious cases (and these are relatively few) to let off their steam.

While many states have fine programs, not all are equally well equipped with the necessary staff or funding to do the job. Also, some states see themselves as brokers, others as advocates. Some are highly regulatory and nitpick the process to the great frustration of many of ACRA's members; others see their role as primarily advisory, and are generous in offering their resources and support. One state may have an outstanding history staff, but be weak in archeology. Some SHPO's only recognize state needs and do not bring clarity to federal projects which, in many cases, cross state lines and affect national interests. We could cite examples, but our intent is merely to be illustrative and not to point fingers at any particular state. We understand the hardships that many of them work under, which only further emphasizes the need for one agency that can step outside the fray and provide a broad, national

perspective. As one of ACRA's members points out, we do not need a rigid system whereby agencies have to seek "clearance" from SHPO's on every project.

ACRA does feel that the Council could do a much better job in helping the states and the other federal agencies handle their work more efficiently and consistently. This can be done administratively. Under current law, we have a flexible process that can be tailored to meet the specific needs of different states and agency missions--using a variety of agreement documents--while also keeping a national perspective and standards that people throughout the country can rely on. It is especially needed when projects, as they often do, cross state or agency boundaries. From a business standpoint, this makes sense, and from a resources use and preservation standpoint this also makes sense.

Recommendation:

* **Guidance for Consistency.** The Council should take steps to improve its guidance to federal agencies and to the state historic preservation officers and Indian tribes to promote consistent application and interpretation of the Council's regulations.

* **Flexibility and Training**. The Council should encourage federal agencies, states and tribes to develop programmatic and other agreements that meet the intent of the National Historic Preservation Act while providing flexibility in the day-to-day administration of the programs. Greatly expanded training opportunities and materials are needed.

* **Dissemination of Information.** The Council staff are currently working to establish a World Wide Web site on the Internet. This should be used to make available on-line information about its regulations, staffing, model agreements, cases, and other information useful to both government agencies and the private sector. Other technological innovations could be helpful to those who lack Internet connections, such as fax-on-demand for documents, which has been successfully used by the National Park Service's National Center for Preservation Technology and Training.

National Register of Historic Places

The National Register of Historic Places is the official federal list of districts, sites, buildings, structures, and objects significant in American history, architecture, archaeology, engineering, and culture. Properties listed on the Register have significance to the prehistory or history of their community, state, or the nation. ACRA believes that the National Register is an important tool to protect, preserve and recognize the historic significance and integrity of sites.

The process for nominating properties to the National Register is entirely separate from determinations of eligibility. Much of what ACRA's members do centers on the latter rather than the former. The nomination process reflects an effort to list, recognize or draw attention to a historic property. It also assures prompt consideration of its values that may likely survive a federal agency's undertaking. The eligibility process is simply a thresh-hold. It is the trigger which causes an agency to "consider" the effects of its undertaking on a particular property. It helps assure that those properties not previously recognized and listed are taken into account.

ACRA Secretary Mike Polk, president of an archaeological firm in Ogden, Utah, believes that the current system works well. His company concentrates on survey, evaluation, testing and National Register evaluations. They do work for state highways as well as for industry. "As long as parties communicate, and the client understands the process, there aren't problems," he says. Mike cites the Utah's Department of Transportation, which he says now has some of the best cultural resources standards in the state.

A frustration of many ACRA members has been the inconsistent application of the National Register criteria among the states. This is especially problematical with regard to determinations of eligibility for the National Register, which are often made at the local level between an affected federal agency and a state historic preservation officer. If the two agree, the determination does not need to go all the way to the Secretary of the Interior nor is a formal nomination to the National Register needed. However, what one state and agency might agree to, a different state or agency might not. We realize that the National Park Service has been attempting, in conjunction with the National Conference of State Historic Preservation Officers, to come to grips with this problem by holding meetings to share information. We would urge them to expand these efforts to include the private sector, and to find other ways--on paper or electronically--to disseminate information.

Indeed, the issue of eligibility determinations that automatically trigger a state or local law is an especially thorny one, when those decisions are made that do not go through the system and reach the level of a Secretarial determination. That apparently was the case regarding Mount Shasta, the determination of eligibility for which was subsequently overturned by the Keeper of the National Register. To use this instance as a reason for eliminating the opportunity to place on the National Register (or determine eligible) places that lack artifacts or other physical evidence of human activity is overkill. The fact is that many historic places have the natural features remaining that made them historic, whether they were once a battlefield or a site sacred to an Indian tribe. As with other properties, the only result from the listing is to require that its cultural and historical importance be considered in planning. It does not mean that development cannot occur--unless a state or local government chooses to allow such a designation to trigger other protections under state or local law. We do not recommend this as a course of action. We bring it to your attention because the issue is one that could use further administrative attention. A change in the law, such as proposed by H.R. 563 is not needed and would, in fact, be discriminatory against a class of resources that equally deserve the recognition afforded by the National Register.

Recommendations:

* **Guidance for Consistency.** The National Park Service should take steps to improve its guidance to federal agencies and to the state historic preservation officers and Indian tribes to promote consistent application and interpretation of the National Register criteria, especially with regard to determinations of eligibility.

* **Evaluations.** The National Park Service's periodic evaluations of the state programs should include an analysis of the effectiveness of these programs, including the application of the National Register criteria. This analysis should include input from those people, agencies, and private entities who use and interact with the state offices.

* **Dissemination of Information.** NPS materials should be disseminated widely through the Internet (unlike the Council, the Park Service does have a World Wide Web site.) Opportunities for on-line feedback should be provided for all sectors of the preservation program, private as well as public.

* **H. R. 563.** We oppose this legislation as both unnecessary and discriminatory.

Conclusion

ACRA would not be the first to describe the current state of the implementation of the National Historic Preservation Act as perfect. We doubt if any system could be perfectly devised, given the complexity of the issues, the vast and varied resources found throughout the United States and the many variables involved. We welcome the oversight of the Congress, as the representative body for our national

government, to assure that the unelected officials in our government are responsive to the public interest, both environmental and economic.

I would therefore like to end this testimony by citing a Section 106 success story. It was given to me by ACRA's President, Chuck Niquette whose headquarters office is in Kentucky. Chuck uses the example to show that the Section 106 regulatory process is one that does not mandate a prescribed outcome. "In fact, it is founded on the principles of balancing competing interests," he says, "of finding solutions that 'take into account' project effects on significant cultural resources in a variety of ways, and of turning liabilities into assets.

"For example, a Section 404 Clean Water Act Permit application in Louisville, Kentucky, led to a study designed to fully document the nature of the archeological record in advance of construction impacts caused by a residential community and marina complex called Falls Harbor. The Falls Harbor project is one element of a much larger effort to re-vitalize and to develop Louisville's waterfront along the Ohio River. The work completed was directed at 1) developing an historic context for the study area based upon in-depth archival research; 2) characterizing the integrity of the archeological deposits and features; and 3) implementing additional subsurface reconnaissance to determine the presence of buried deposits. Field work consisted of 64 backhoe trenches excavated across a six block area and limited hand excavation of specific areas.

"This work resulted in the documentation of 177 prehistoric and historic features. Historic features were classified by time period and by functional type. The historic remains included privies, wells, cisterns, structural foundations, piers and walkways dating from the early nineteenth century through the twentieth century. The remains of a kiln operating during the nineteenth century was also located. Prehistoric remains included pit features and human burials dating from the Late Archaic through the Middle Woodland period. While significant features and other types of subsurface deposits were found to be distributed throughout the study area, three distinct sub-areas were identified as the most complex and most valuable areas to be addressed by any subsequent mitigation efforts. In fact, the Section 106 consultations led to a decision to mitigate the projects impacts by avoiding and making green space of the three areas that contained the most significant resources.

"Plans are currently underway to "develop" the archeological resources of the Falls Harbor project area as a heritage tourism magnet to draw people to the area, help create a sense of "place and of history" for the marina complex, and to contribute to the history of the local area and the region as a whole."

# # #



KEEPERS OF THE TREASURES

Cultural Council of American Indians, Alaska Natives and Native Hawaiians

Statement of

Cecil Antone
Lt. Governor, Gila River Indian Community
Sacaton, Arizona

on behalf of

Keepers of the Treasures:
Cultural Council of American Indians,
Alaska Natives and Native Hawaiians

Before the

U.S. House of Representatives
Committee on Resources
Subcommittee on National Parks, Forests & Lands

OVERSIGHT HEARING ON HISTORIC PRESERVATION

March 20, 1996

1785 Massachusetts Avenue, N.W.
Washington, DC 20036
202/673-4207
fax:202/673-4038

My name is Cecil Antone and I am the Lt. Governor of the Gila River Indian Community, a federally recognized Indian tribe with a reservation in central Arizona. I am appearing before you today on behalf of Keepers of the Treasures: Cultural Council of American Indians, Alaska Natives and Native Hawaiians. On behalf of the Keepers, I want to thank the Subcommittee for the opportunity to present this testimony.

SUMMARY

The Keepers supports the reauthorization of the Advisory Council on Historic Preservation. Under the National Historic Preservation Act (NHPA) the Advisory Council performs the role of overseeing the consultation process mandated by section 106 of the NHPA, which provides for the review of proposed federal actions to ensure that any impacts on historic places are taken into consideration. The section 106 consultation process is the primary mechanism under federal law through which federal agencies are required to consider the effects of their proposed actions on places that hold religious or cultural importance for Indian tribes and Native Hawaiian organizations, because such places may also have historic significance. Under its regulations the Advisory Council stands back and lets the State Historic Preservation Officer (SHPO) and the responsible federal agency conclude most consultations with little or no Council involvement, but matters do arise in which the Advisory Council must become directly involved. The Keepers believes that the continued existence of the Advisory Council is essential for the section 106 process to achieve its legislative purpose of ensuring that the effects of federal actions on historic places are taken into consideration before decisions are made.

The Keepers believes that, in the 1992 Amendments to the NHPA, Congress took some important steps toward bringing Indian tribes and Native Hawaiian organizations into our national historic preservation program. While the implementation of the new tribal provisions has been slower than we had hoped for, progress has been made. The National Park Service (NPS) has issued "Interim Guidelines" for tribes that seek to assume part or all of the duties of a state historic preservation officer, as authorized by the 1992 Amendments, and a number of tribes have applied to assume some of these duties. We believe that the development of tribal historic preservation programs will help to make the section 106 process work better, and more expeditiously, because tribal programs will raise issues of concern to tribes early enough in federal planning processes that, in many cases, mitigation measures can be developed without inordinate delay. Accordingly, we think that a modest increase in the level of funding for tribal programs would yield benefits to the nation as a whole. We also believe that consideration of tribal concerns by federal agencies in the section 106 process would be more effective, and more expeditious, if federal agencies were to establish establish on-going consultative relationships with those tribes with religious and cultural interests in lands under federal ownership. The 1992 Amendments provide authority for establishing such on-going relationships. Congress could direct federal land managing agencies to act on this authority.

The Keepers strongly opposes H.R. 563, a bill which would eliminate from eligibility for the National Register many traditional cultural properties. This would have a greatly disproportionate affect on Native peoples whose cultures are rooted in this land, and whose history is not as tied to the built environment as are other peoples in the United States.

BACKGROUND OF THE KEEPERS

Keepers of the Treasures is a national intertribal organization primarily comprised of individuals from around the country who are engaged in a broad range of activities to preserve the cultural traditions of American Indian, Alaska Native and Native Hawaiian peoples. Many of the individual members of the Keepers work for tribal governments, Alaska Native corporations, and Native Hawaiian organizations in cultural preservation programs. Others work for state or federal agencies in historic preservation and related fields. The Keepers was founded in 1991 as a non-profit educational organization, governed by a fifteen member board of directors who are elected on a regional basis. I served as one of the founding board members, until stepping down in 1994 due to increasing responsibilities in my own tribal community.

The Mission Statement of the Keepers describes the organization as a "cultural council of American Indians, Alaska Natives and Native Hawaiians who preserve, affirm and celebrate their cultures through traditions and programs that maintain their native languages and lifeways. The Keepers protects and conserves places that are historic and sacred to indigenous peoples." The Mission Statement goes on to say that "The Keepers provides technical assistance and seeks to identify funding from private and public sources for these purposes." In keeping with this Mission, the Keepers recently held its fifth annual conference, which was attended by nearly 300 people representing tribes and organizations from around the country. This year's conference was held at the Scottsdale Community College, and my tribe was one of the host tribes. The conference featured presentations and workshops on a variety of topics relating to historic preservation, archaeology, graves protection, repatriation and native languages. Many of the presentations were made by Indian people who work for their tribes and who want to help others learn from their experiences.

INTRODUCTION

Subcommittee Chairman James V. Hansen has requested, in his letter dated March 14, 1996, that our testimony address three specific issues: (1) reauthorization of the Advisory Council on Historic Preservation; (2) suggestions on how to streamline the section 106 review process; and (3) the process for listing properties on the Nation Register of Historic Places. Our testimony address these three issues in turn, and comments on H.R. 563, legislation which would largely undo the painstaking progress Native peoples

have been making in becoming partners in our nation's historic preservation program.

1. REAUTHORIZATION OF THE ADVISORY COUNCIL

Keepers of the Treasures supports reauthorization of the Advisory Council. In 1966 when the NHPA was originally enacted, Indian tribes and other Native peoples were overlooked entirely. Amendments enacted in 1980 authorized the National Park Service (NPS) to make grants to tribes for the preservation of their cultural heritage, but no funds were appropriated for this purpose until FY 1990. Thus, for the first quarter century of the national program established pursuant to the NHPA, the involvement of Indian tribes was marginal at most, despite the fact that the histories of Indian tribes and their dealings with the larger American society comprise important parts of the history of United States.

The 1992 NHPA Amendments set the stage for tribal governments to become more directly involved in historic preservation. Tribes now have a right to take over the duties of State Historic Preservation Officers (SHPOs) for lands within their reservations. In addition, whether or not they choose to take over such duties, tribes have a right to participate in the section 106 consultation process when a proposed federal action might affect an historic property (one that is eligible for or listed on the National Register of Historic Places) if the the tribe considers the property to have religious and cultural significance. Native Hawaiian organizations also have this right to participate in section 106 consultation, but they do not have the right to choose to take over the duties of the SHPO.

Over the years the role of the Advisory Council in administering the section 106 process has evolved to the point that the Council's involvement in consultation on specific proposed federal actions is typically a limited role. Most consultations are resolved by the SHPO and federal agency with little or no involvement by the Council. But we do not believe that the process would work without the Council -- sometimes the Council must become involved. We expect that there will be cases in which Indian tribes will feel that they must call on the Council to reconsider the agreements that have been worked out by the SHPOs and the federal land managing agencies. Because it is an independent agency, Council can perform the role of ensuring that Indian concerns are taken into consideration. A limited role for the federal regulatory agency will only work to achieve the purposes of the NHPA, however, if the option of stepping into the process exists for those cases in which it is needed.

Because most Indian reservations are located in the Western states, the Keepers strongly supports reauthorization of the Advisory Council at a level of funding that will permit the Council to maintain its western regional office in Denver. The staff of that office have developed working relationships with some tribal programs and have generally tried to be accessible to Indian people. We

think that, now that Indian tribes are finally becoming involved in our national historic preservation program, it is critical to keep the western office of the Council open.

2. THE SECTION 106 REVIEW PROCESS

Keepers of the Treasures supports the section 106 consultation process. The process does not mandate an outcome, it simply requires federal agency officials to consult with the Council, with the SHPO, and, in some cases, with Indian tribes and Native Hawaiian organizations. The process promotes informed decisions; it seeks to avoid inadvertent impacts on properties that have historic significance.

Section 106 requires the federal agency official to consider the effects that a proposed action might have on any property that is listed on or eligible for the National Register and to afford the Advisory Council the opportunity to comment. The Advisory Council is a small agency, and its regulations, 36 C.F.R. part 800, provide a major role for the SHPOs in carrying out the Council's duties under section 106. The 1992 Amendments wrote this role of the SHPO into the Act. NHPA § 101(b)(3)(I). As amended in 1992, section 101(d) now provides for involvement of tribal governments in the consultation process in the following ways:

(1) A tribe can take over the role of the SHPO for lands within its reservation, if the tribe has developed a plan that the NPS has approved;

(2) A tribe can enter into an agreement with the Advisory Council which provides that, for lands within the tribe's reservation, the section 106 process will be carried out pursuant to regulations adopted by the tribe rather than the Council's regulations; and

(3) Regardless of whether a tribe has assumed a role in section 106 consultation for lands within its reservation under either or both of (1) or (2), a tribe has the right to participate in section 106 consultation if the proposed federal action would affect an historic property (listed or eligible) that the tribe regards as having religious and cultural importance. This right to participate applies regardless whether the property that would be affected is within reservation boundaries. Native Hawaiian organizations also have this right to participate in section 106 consultation.

We believe that one good way to make the section 106 process work better would be to provide more federal support for the development of tribal government historic preservation programs. Historic Preservation Fund grants to tribes have been funded at a level of about $2 million annually for the last two years. It is our

understanding that NPS estimates the level of need to be in the range of $5 to $7 million. Tribes that have built historic preservation (or, more generically, cultural resources) programs find that their consultations with federal agencies and SHPOs lead to better outcomes when they get involved in consultation early. When tribal concerns are not raised until late in the consultation process, finding ways to accommodate tribal concerns becomes harder to do. So tribes have a strong incentive to become involved early, but it is hard to do that without any historic preservation or cultural resources staff.

Even with staff, some tribal historic preservation programs have found that becoming involved in the section 106 process early enough to affect the outcome is not easy. One way to improve this would be for federal land managing agencies and tribes that are concerned with lands under federal control to establish ongoing consultative relationships. As amended in 1992, section 110(a)(2) of the Act provides authorization for federal agencies to work toward such consultative relationships. We believe that building such relationships would improve the section 106 process because it would reduce the frequency with which tribal concerns are dealt with on a crisis management basis.

In addition to the review process established by section 106, Indian tribes also have some rights under other federal statutes to receive notice and be consulted when a federal action might affect certain kinds of properties on federal lands. For example:

- If the issuance of a permit under the Archaeological Resources Protection Act (ARPA) would result in harm to or destruction of a religious or cultural site, the tribe that considers the site to have religious and cultural importance has a right to receive notice before the permit is issued. 16 U.S.C. § 470cc(c).

- If the issuance of an ARPA permit would lead to excavation of human remains or "cultural items" covered by the Native American Graves Protection and Repatriation Act (NAGPRA), the tribe with cultural affiliation must be consulted before the permit is issued. 25 U.S.C. § 3002(c)(2).

- If human remains or cultural items covered by NAGPRA are inadvertently discovered on federal lands in connection with some permitted activity such as construction, mining, logging or agriculture, work must stop while the culturally affiliated tribe is notified. 25 U.S.C. § 3002(d).

Thus, in addition to the NHPA, there are other good reasons why federal land managing agencies should build ongoing consultative relationships with tribes that have aboriginal or historic ties to lands under their jurisdiction.

The July 20, 1995, "Public Discussion Draft" of proposed revisions to the Council's regulations include a new section 800.12 that would specify procedures for consultation with Indian tribes and Native Hawaiian organizations. While we do not want to be understood as giving an unqualified endorsement of the language of this section, it would be a major step toward writing the 1992 Amendments into the regulations. We believe that the Council should proceed without further delay to publish proposed revisions to its regulations for public comment, and the language in section 800.12 of the Public Discussion Draft is fine with us as a vehicle for public review and comment.

3. LISTING PROPERTIES AND DETERMINATIONS OF ELIGIBILITY

One of the main reasons that we are so concerned about our national historic preservation program is that some of the places that Indian and other Native peoples regard as sacred places also have historic significance and, as such, are eligible for the National Register of Historic Places. The section 106 consultation process provides the only procedure under federal law through which federal agency officials can be made to consider the effects of their decisions on places that are sacred in tribal religions, and that have ongoing importance in the practice of our religions and the preservation of our cultures. In this regard, Keepers of the Treasures supports the testimony submitted by the Association on American Indian Affairs, through its legal counsel Jack F. Trope, which addresses this issue in more detail.

The 1992 Amendments included language to make it clear that places that tribes consider to have religious and cultural importance may be eligible for the National Register, if they meet the criteria of eligibility. The new statutory language did not change the law but, rather, confirmed the existing practice. In 1990 the National Park Service had issued a guidance document entitled *National Register bulletin 38: Guidelines for Evaluating and Documenting Traditional Cultural Properties*. As explained in detail in *Bulletin 38*, a traditional cultural property is a property that is eligible for the National Register because of "its association with cultural practices or beliefs of a living community that (a) are rooted in that community's history, and (b) are important in maintaining the continuing cultural identity of the community." Many of the places that qualify for the National Register as traditional cultural properties are places where there is no physical evidence of the historic significance of a place. Culturally significant natural landscapes or natural objects may qualify as traditional cultural places.

Although *Bulletin 38* was issued in 1990, some federal agencies have not followed its guidance. In one recent case, the Tenth Circuit Court of Appeals held that the Forest Service, in failing to follow the guidance in *Bulletin 38*, had failed to make a reasonable and good faith effort to identify historic properties and, thus, had violated the Advisory Council's regulations. *Pueblo of Sandia v. United States*, 50 F.3d 856, 860-062 (10th Cir. 1995). Identifying traditional cultural

properties and taking them into consideration in the section 106 process would be less problematic if all federal agencies made serious efforts to build ongoing consultative relationships with tribes, and if they voluntarily followed the guidance that NPS has provided for them.

H.R. 563, which is pending before this Subcommittee, would change the law by eliminating any traditional cultural property from eligibility for the National Register unless artifacts or other physical evidence of human use are present. Keepers of the Treasures strongly opposes this bill. At our fourth annual conference in 1994 we adopted a membership resolution expressing our opposition. (Copy attached.) H.R. 563 would eliminate what little protection there is under current federal law for places that are sacred to Indian and other Native peoples, and that also have sufficient historic significance to qualify for the National Register. While such a change in the law would affect some places that are significant to other ethnic groups in United States, we believe that it would disproportionately affect Indian and other Native peoples. Indian, Alaska Native and Native Hawaiian peoples, in contrast with all other ethnic groups in the present day United States, whose cultural roots reach back to other lands, the history and cultural traditions of Native peoples have their roots in what is now the United States. The non-material aspects of tribal cultures -- religious belief systems and ceremonial practices, oral history and folklore, languages -- are closely tied to the natural world. Enactment of H.R. 563 would also convey the clear message that the larger American society does not really care about many of the places that have historic significance for Indian and other Native peoples. We strongly believe that this is a message that the larger society cannot afford to send. The larger society needs tribal voices in our national historic preservation program.

We wish there was a federal law to require a federal agency considering an action that would damage a tribal sacred place, or that would restrict the access of traditional religious practitioners in using a tribal sacred place, to at least show that there is a compelling governmental interest which would be served by going ahead with the proposed action. But the NHPA is not such a law. Rather, it only requires that a tribe or Native Hawaiian organization that regards the affected place as sacred be given the opportunity to participate in the section 106 consultation process. In a country that was founded on the principle of freedom of religion, surely keeping the present law in place is not too great a burden -- so that federal officials are required to at least take into consideration the religious beliefs of the original inhabitants of this land.



KEEPERS OF THE TREASURES

Cultural Council of American Indians, Alaska Natives and Native Hawaiians

Membership Resolution 95-02

Seeking Preservation of Mount Shasta as an Historic Property and Inter-Tribal Sacred Site; Expressing Opposition to Congressional Bill H.R. 563

WHEREAS, a bill has been introduced in the Congress of the United States of America, H.R. 563, which would prohibit the designation of Mount Shasta as an Historic Property under the National Historic Preservation Act; and

WHEREAS, H.R. 563 is a reactive attempt to deny the historic significance of Mount Shasta to numerous American Indian Tribes which have committed themselves to seeking protection and preservation for the mountain which holds tremendous religious, cultural and historic importance for them; and

WHEREAS, in addition to its language regarding Mount Shasta, H.R. 563 would amend the National Historic Preservation Act by changing the criteria of eligibility for the National Register of Historic Places by prohibiting any determination that any Traditional Cultural Property is eligible for the Register unless such a property contains "...artifacts or other physical evidence of human activity that have unique significance in history or pre-history;" and

WHEREAS, amending the National Historic Preservation Act according to H.R. 563 would deprive American Indians, Alaska Natives and Native Hawaiians of the only mechanism existing under federal law that provides at least some degree of protection for places in the natural world that hold religious and cultural importance for Native People; and

WHEREAS, depriving Native People of the minimal procedural protection afforded by the National Historic Preservation Act would deprive the American people of the opportunity to learn about the significance for American History of the places that hold cultural and religious importance for Native People;

1785 Massachusetts Avenue, N.W.
Washington, DC 20036
202/673-4207
fax:202/673-4038

NOW THEREFORE BE IT RESOLVED, **that the members of the Keepers of the Treasures, Cultural Council of American Indians, Alaska Natives and Native Hawaiians oppose the enactment of H.R. 563;**

AND BE IT FURTHER RESOLVED, **that the Keepers of the Treasures calls upon its members, its Board of Directors and all concerned citizens of the United States of America to oppose enactment of H.R. 563.**

Certification

The foregoing resolution was adopted in unanimous consent by the voting membership of the Keepers of the Treasures during the annual membership meeting assembled at Sioux Falls. South Dakota on May 11, 1995.

I

104TH CONGRESS
1ST SESSION

H. R. 563

To amend the National Historic Preservation Act to prohibit the inclusion of certain sites on the National Register of Historic Places, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

JANUARY 18, 1995

Mr. HERGER introduced the following bill; which was referred to the Committee on Resources

---

A BILL

To amend the National Historic Preservation Act to prohibit the inclusion of certain sites on the National Register of Historic Places, and for other purposes.

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

SECTION 1. ELIGIBILITY FOR INCLUSION ON NATIONAL REGISTER OF HISTORIC PLACES.

Section 101(a)(6) of the National Historic Preservation Act (16 U.S.C. 470 and following) is amended by inserting "(A)" after "(6)" and by adding the following at the end thereof:

"(B) After the date of the enactment of this subparagraph, any unimproved or unmodified natural landscape feature which does not contain artifacts or other physical evidence of human activity that have unique significance in history or pre-history shall not be—

"(i) eligible for inclusion on the National Register of Historic Places;

"(ii) included on the National Register of Historic Places; or

"(iii) considered to be a historic or pre-historic property or historic resource for purposes of this Act or any other Federal law.

Nothing in this subparagraph shall invalidate or otherwise affect any determination made under this Act or under any other Federal law prior to the enactment of this subparagraph with respect to any site.".

SEC. 2. PROHIBITION OF DESIGNATION OF MT. SHASTA

The Mt. Shasta area in the State of California, as generally depicted on the United States Forest Service map entitled "Geographic Limits Multiple Property Form Mt. Shasta Native American Culture and History", numbered 1, and dated April 1993, may not be designated by any agency or authority of the United States as a historic district, historic site or national monument under the National Historic Preservation Act (16 U.S.C. 470 and fol-

lowing) or the Antiquities Act (16 U.S.C. 431–433). Any designation made prior to the enactment of this Act which is inconsistent with the preceding sentence shall cease to have any force and effect upon the enactment of this Act. The map referred to in this section shall be on file and available for public inspection in the offices of the United States Forest Service, Department of Agriculture.

STATEMENT OF KATHERINE H. STEVENSON, ASSOCIATE DIRECTOR, CULTURAL RESOURCE STEWARDSHIP AND PARTNERSHIPS, NATIONAL PARK SERVICE, U.S. DEPARTMENT OF THE INTERIOR BEFORE THE SUBCOMMITTEE ON NATIONAL PARKS, FORESTS AND LANDS, CONCERNING H.R. 563, A BILL TO AMEND THE NATIONAL HISTORIC PRESERVATION ACT TO PROHIBIT INCLUSION OF CERTAIN SITES ON THE NATIONAL REGISTER OF HISTORIC PLACES.

March 20, 1996

Good morning Mr. Chairman. Thank you for the opportunity to present the Department of the Interior's views on H.R. 563, which would significantly affect the National Park Service's historic preservation programs throughout the country. We oppose enactment of the bill.

H.R. 563 has two sections. Section 1 amends Section 101(a)(6) of the National Historic Preservation Act to prohibit the inclusion of unimproved or unmodified natural landscape features which do not contain physical evidence of human activity on the National Register of Historic Places, or their designation as historic resources for purposes of the Act. Section 2 of the H.R. 563 would specifically rescind the 1994 historic designation of portions of Mt. Shasta, a significant Native American cultural site located in the Shasta-Trinity National Forest in northern California.

The National Park Service has serious concerns regarding the impact of this legislation on the ability of all our citizens, state and local governments, and Federal agencies throughout the country to recognize and honor historic properties important to our collective heritage. As you know, the National Register of Historic Places is the official list of this nation's historic and prehistoric resources worthy of preservation. Properties listed in the National Register include a diverse range of buildings,

sites, districts, structures, and objects that are significant in American history, architecture, archeology, engineering, and culture.

Enactment of this bill would effectively preclude designations to the National Register for many important traditional cultural places, historic battlefields, natural monuments and exploration landmarks, rural historic districts, and sites of historic events significant in American history that may have occurred on open land.

While the vast majority of properties historically recognized by the National Register represent man-made features such as buildings, engineering structures, and archeological sites, our nation has, from the very start, also included on the National Register historic sites and natural landscapes that do not bear the visible imprint of man. Such places include Plymouth Rock in Massachusetts, where the Pilgrims first came ashore; the site of Christopher Columbus's first landing on what is now the U. S. Virgin Islands; Big Bear Butte, South Dakota, where the revered Cheyenne prophet Sweet Medicine learned from those in the mountain how the Cheyenne should live; Walker Pass in Idaho, site of the first immigrant wagon train trail into California from the East; and the Tinta and Faha Massacre Sites on the island of Guam. All of these places have been listed in the National Register in recognition of the contributions that events at these locations made to the diverse history of our country. Should H.R. 563 pass these types of historic places could not be recognized and honored.

The National Park Service is particularly concerned that enactment of Section 1 will place an inequitable burden directly on Native American Indian tribes, Native Alaskan groups, and Native

Hawaiian organizations. For these groups traditional cultural places, such as Mt. Shasta, represent one of the most basic components of their history. The ability to identify and recognize these sites under the programs of the National Historic Preservation Act has become increasingly important as more and more individuals and groups seek to reestablish links with their cultural heritage and traditional lifeways. Examples of such sites include I'itoi [pronounced E-E-toy], also known as Montezuma's Head. located in southern Arizona, a natural rock formation sacred to the Tohono O'odham [pronounced Toe-hoe-no Oh-oh-dom] people, whose oral history describes the site as the location associated with the deity I'itoi and his instructions to the people about living and surviving in the desert; or Tahquitz Canyon [pronounced **Dahg**-wish] in southern California, where the Cahuilla [pronounced ka-**we**-a] people believe their ancestors entered this world from a lower one at the beginning of time.

Because Native Americans have lived in America longer than other groups, landscape features figure strongly in their traditions more often than in the traditions of many other groups. As a result, Native American traditional places are often entirely natural, showing little or no sign of human use or modification. While people sometimes mark traditional cultural places with features, such as the standing slabs of rock used by vision questors at Chimney Rock in Idaho, more often, a traditional cultural place is not marked. There is nothing visible to suggest that Spider Rock on the Navajo Reservation is associated with Spider Woman, one of the first people in Navajo tradition.

The attached list provided to supplement this testimony contains a partial list of some of the historic traditional places currently recognized by the National Register. Prohibiting such sites from inclusion

in the National Register will have an enormously negative impact on the ability of Native American groups, Native Hawaiians, and other ethnic groups to recognize, honor, and preserve for the education and appreciation of all Americans their distinct heritage under the aegis of the National Historic Preservation program.

While the documentation of important traditional cultural places to Native American communities will be greatly affected by the passage of H.R. 563, this bill will also affect a broad range of other historic places.

If enacted, H.R. 563 would also prohibit the National Park Service from listing any military battlefield that no longer contains "physical evidence of human activity" associated with the events of the battle. Many military engagements from pre-Revolutionary war battles in New England to pivotal World War II skirmishes in the Pacific Islands, were contested on open ground in areas that today contain no man-made features and few, if any, visible reminders of the actions that took place there. What remains today of these sites in many cases are only the natural features, farmlands, prairies, rainforests, and rivers that played host to these pivotal events.

More than 110 American battle sites have been listed in the National Register, including properties associated with the French and Indian War, the American Revolution, the War of 1812, the various Indian war campaigns nationwide, and World War II in the Pacific and Alaska. The great majority of these include large expanses of natural areas. While these battle sites that are listed in the National Register are significant treasures of American history, they are only a fraction of the sites worthy of

historic designation. The Congressionally-appointed Civil War Sites Advisory Commission, for example, determined that 384 out of some 10,500 armed conflicts which occurred during the Civil War were principle battles. Of these 384 battle sites, only 84 or 22% are listed in, or determined eligible for, the National Register. We view the enactment of this bill as directly conflicting with many of the laws passed by Congress in recent years to address the identification and recognition of America's military history.

The provisions of H.R. 563 will also affect natural features, landmarks, or geographical locations associated with the early exploration and settlement of this country. Examples include locations such as Clark's Lookout, a natural stone outcrop in Beaverhead County, Montana, used as an important sighting and observation point by the Lewis and Clark expedition of 1805. The natural landscape feature contains no physical evidence of Clark's exploits, but remains one of the few identifiable locations that can be directly tied to their celebrated expedition through the unexplored Northwest. Another example is the well known Robidoux Pass near Scotts Bluff, Nebraska, used by scores of western traders, settlers, and miners who followed the Oregon Trail and helped to establish America's western frontier. Little if any man-made resources indicate the crucial role played by this important geographical landmark.

In recent years, the National Park Service has promoted a more intensive study and evaluation of rural landscapes in an attempt to engage a more holistic appreciation for historic rural areas across the country, rather that the piecemeal approach that looks only at individual buildings, sites, and objects divorced from their settings and local context. Rural historic districts, areas such as Ebey's

Landing National Historical Reserve, a National Park System unit in Washington State, or the 8,300-acre Ashwood Rural Historic District in Maury County, Tennessee, have become important tools in the struggle of rural property owners to maintain their sense of community in the midst of urban expansion, local development pressures, and changing economic conditions. Many historic rural districts contain substantial areas of unimproved or undeveloped land (mountains, prairies, rivers, lakes, forests, and grasslands), which, nonetheless significantly influenced the physical organization of the local communities and land uses. It is unclear exactly how the pending legislation might affect the designation of important elements like these within the historic districts.

A short list of just some of the constituency groups that would be most directly impacted by the restrictions placed on designation by H.R. 563--Native Americans, Native Alaskans, Native Hawaiians and other native Pacific-islanders, battlefield preservationists, military enthusiasts and historians, rural property owners, rural conservation planners and supporters, and historic trail enthusiasts--reveals the far-reaching impact of this proposed legislation. The attachments provided to the committee members as part of my testimony here today list just a few examples of the National Register properties and National Historical Landmarks that would have fallen under the provisions of this bill and possibly have been precluded from historic designation.

Section 2

Section 2 of H.R. 563 would prohibit the specific designation of Mt. Shasta as a historic property. The 1994 determination by the Keeper of the National Register that certain portions of Mt. Shasta were eligible for listing in the National Register was conducted at the request of the U.S. Forest

Service to assist the agency in complying with Section 106 of the National Historic Preservation Act, regarding long-range planning for future use of the forest resources. The Keeper's determination was based on considerable documentation, public testimony, and professional analysis.

In fact, while the designation process engendered considerable discussion and debate on behalf of state and federal agencies, local residents, Native American groups, and numerous other interested parties (and continues to do so), we believe that the project reveals the suitability of the current evaluation process for dealing with such unmodified natural landscape features and the recognition of traditional cultural places. The National Register staff reviewed a stack of documentation over four feet high regarding the Mt. Shasta evaluation, including ethnographic materials prepared by professional anthropologists, oral history interviews, primary and secondary source information on Native Indian use in the northern California area, and hundreds of personal letters and petitions from interested parties representing both sides of the issue. Because of the extensive expressions of interest by the general public, the Keeper personally examined the mountain in considerable detail and on August 31, 1994, published in the Federal Register an invitation for the public to submit comments on whether all or part of Mt. Shasta met the National Register criteria for evaluation. When the comment period ended on October 29, 1994, we had received more than 2,500 additional letters and petitions. All of this material was carefully analyzed in reaching the final determination, which this bill now seeks to overturn.

While the evaluation was made more difficult by the fact that no visible man-made features could be identified with the traditional Native Indian use of the site, the documentation clearly described the

importance of this particular property to the closely held traditional beliefs of local tribes regarding their culture and world view. For many northern California tribes, Mt. Shasta is considered the sacred home to gods and spiritual beings important to their view of the world. Since time immemorial local tribes have traditionally used the areas around the prominent landmark as places of spiritual learning, renewal, and medicinal healing. For these people, Mt. Shasta is the key link in recognizing and honoring their cultural heritage.

Mr. Chairman, this completes my remarks on the H.R. 563. We hope that you will consider the full impact of this legislation on the historic preservation programs of the National Park Service and, more importantly, on all of America's citizens. I appreciate the opportunity to appear before you and the committee and am prepared to answer any questions which you or members of the committee may have at this time.

ATTACHMENTS

TRADITIONAL CULTURAL PLACES
A property that is eligible for inclusion in the National Register because of its association with cultural practices or beliefs of a living community that (a) are rooted in that community's history, and (b) are important in maintaining the continuing cultural identity of the community.

Examples: A location associated with the traditional beliefs of a Native American group about its origins, its cultural history, or the nature of the world. An urban neighborhood or rural community that is the traditional home of a particular cultural group, and that reflects its beliefs and practices. A location where a community has historically gone to perform economic, artistic, or ceremonial activities in accordance with traditional cultural practices important in maintaining its historical identity.

TRADITIONAL CULTURAL PLACES LISTED IN THE NATIONAL REGISTER OF HISTORIC PLACES OR DETERMINED ELIGIBLE FOR LISTING.

*Rio Grande and Sand Bar areas of the Pueblo of Sandia, Sandoval County, New Mexico. [Determined Eligible 1988] These Rio Grande River sandbars have been used for generations by the people of Sandia Pueblo for rituals involving immersion in the river's waters.

*Helkau Historic District, Del Norte County, Six Rivers National Forest, California. [Determined Eligible 1981] This rural land area is associated with significant cultural practices of the Tolowa, Yorok, Karuk, and Hoopa Indian tribes of the area, who have used the district for generations to make medicine and communicate with spirits.

*Tahquitz Canyon, Riverside County, California. [NR 1972] The site is associated with Tahquitz, a Cahuilla Indian demigod who figures importantly in the tribe's traditions and is said to occupy an obsidian cave high in the canyon.

Bear Butte, Meade County, South Dakota. [NR 1973]. This butte is associated with the cultural beliefs of the Cheyenne Indians. The revered prophet Sweet Medicine learned how the Cheyenne should live and act at this location.

Inyan Kara Mountain, Crook County, Black Hills region, South Dakota. [NR 1973] This mountain is the home of spirits significant in the traditions of the Lakota and Cheyenne.

*I'itoi Mo'o (Montezuma's Head) and 'Oks Daha (Old Woman Sitting), Pima County, Arizona. [NR 1994] This rock formation is sacred to the Tohono O'odham people. According to thier tradition the rock outcrop is associated with the deity I'itio and his instructions to the people about living and surviving in the desert.

*De-No-To Cultural District, Humboldt County, Six Rivers National Forest, California [NR 1985] This area is sacred to the Hupa people because of its place in their system of traditional cultural practices, including medicine making and ceremonial practices.

*Kuchamaa (Tecate Peak), San Diego County, Bureau of Land Management, California. [NR 1992] A sacred mountain associated with the Kumeyaay Indians. The mountain peak marks a significant location for the acquisition of knowledge and power by shamans and remains a site of rituals and rites important to the Indians.

Tonnachau Mountain, Iras, Moen Island (Truk), Federated States of Micronesia. [NR 1976] According to Trukese traditions, this is the location where Sowukachaw, founder of the Trukese society came and established his meetinghouse at the beginning of Trukese history.

*Coso Hot Springs, Inyo County, California. [NR 1978] This natural hot springs site is an important traditional spiritual and medicinal center. During the 19th century the site also became associated with Euroamerican use as a resort, while still serving local Native American use.

==========

BATTLEFIELD SITES
A property associated with important military events; which may include natural features, rural landscapes, or historic buildings.

Examples: Sites of important military engagements, battles, and skirmishes; the routes of marches, escapes, or forced evacuations associated with military activities; the site of an important treaty signing or other historic military event.

BATTLEFIELD SITES LISTED IN THE NATIONAL REGISTER OR DETERMINED ELIGIBLE FOR LISTING

*Connor Battlefield (Tongue River Battlefield), Sheridan County, Wyoming. [NR 1971] In 1865, the site of the most important engagement of the Powder River Indian Expedition, a punitive military campaign to stop Sioux, Cheyenne, and Arapaho attacks on immigrant trials. The battlefield encompasses the site along a bend of the Tongue River of Arapaho Chief Black Bear's village, which was destroyed in the battle. The area today retains only the physical features of the natural landscape.

Horseshoe Bend National Military Park (Battle of Horseshoe Bend), Tallapoossa County, Alabama. [NR 1966] Site of 1814 battle which ended the Creek War and opened much of Alabama and Georgia to settlement by whites and also established the reputation of Gen. Andrew Jackson. Forested and agricultural land.

Moore's Creek National Military Park (Battle of Moore's Creek), Pender County, North Carolina. [NR 1986] Site of 1776 battle between Patriot forces and a larger force of Scottish Loyalists, which commemorates an important early action in the opening phases of the American Revolution.

Cowpens National Battlefield, Cherokee County, South Carolina. [NR 1966] Revolutionary War military engagement fought in rural agricultural fields in which Gen. Daniel Morgan led his army of Continental soldiers and backwoods militia to victory over Lt. Col. Banastre Tarleton's larger force of British regulars. An important battle in the chain of British defeats in the South which led to their ultimate defeat at Yorktown.

*Nez Perce National Historical Park, Clearwater County, Idaho [NR 1966] Battlefield areas associated with nineteenth-century Indian frontier wars.

*Battle of Milk River Site, Rio Blanco County, Colorado [NR 1975] Significant Indian war engagement site.

Buford's Massacre Site, Lancaster County, South Carolina. [NR 1990] An open 2-acre site of a Revolutionary War defeat of American troops by British regulars after the fall of Charleston.

Dancing Rabbit Creek Treaty Site, Noxubee County, Mississippi. [NR 1973] Site of signing of the Treaty of Dancing Rabbit Creek on September 27, 1830, which ceded Choctaw Indian lands in Mississippi to the Federal government. Today the site is largely covered by pine forest and contains no known remains associated with treaty period.

Treaty of Pontotoc Site, Pontotoc County, Mississippi. [NR 1973] Site of the 1832 signing of the Treaty of Pontotoc which effectively ended Indian ownership of lands in Mississippi and heralded the end of the Chickasaw as a viable tribe in state history.

Medicine Lodge Peace Treaty Site, Barber County, Kansas. [NHL/NR 1969] Site of significant treaty signing which required Plains Indians to relinquish claims to ancestral lands and nomadic culture for federal reservations and promised economic assistance.

*Tinta Massacre Site, Guam County, Guam. [NR 1991] Site of the massacre of 16 local villagers at the hands of Japanese Imperial Army troops in 1944, a few days before liberation of the island by U.S. forces.

*Faha Massacre Site, Guam County, Guam. [NR 1991] Site of the massacre of approximately 30 local villagers at the hands of Japanese Imperial Army troops in 1944, a few days before liberation of the island by U.S. forces.

NATURAL MONUMENTS AND EXPLORATION LANDMARKS
A natural feature, landmark, or geographical location associated with the early exploration of this country.

Examples: The location of an important physical landmark on the Oregon Trail, which served as a key trail marker. An natural feature (rock outcrop, hilltop) that served as an important lookout, sighting position, or landing site for early explorers and travelers. A natural pass or trail route containing little if any man-made resources.

NATURAL MONUMENTS LISTED IN THE NATIONAL REGISTER OR DETERMINED ELIGIBLE FOR LISTING

*Clark's Lookout, August 13, 1805, Beaverhead County, Montana. [NR 1994] Natural stone outcrop used as an important sighting and observation point by the Lewis and Clark Expedition of 1804-1806 during the expedition's initial explorations of the Upper Missouri River basin.

*Plymouth Rock, Plymouth County, Massachusetts. [NR 1970] Traditional symbol of the landing site of the Pilgrims, who were the first Europeans to establish a settlement in the early Massachusetts colony.

Columbus Landing Site, St. Croix Island, American Virgin Islands. [NHL 1960/NR 1966] Site of Columbus voyage landing on U.S. soil.

Bering Expedition Landing Site, Valdez-Cordova County, Alaska. [NHL/NR 1977] Landing site on Kayak Island at the mouth of a creek running into the Gulf of Alaska. The site is associated with the first scientific investigation of northwestern North America by Russian explorers in 1741.

*San Francisco Bay Discovery Site, San Mateo County, California. [NHL/NR 1968] Mountain pass location associated with the first sighting of the San Francisco Bay area by early west coast explorers.

*Barn Bluff, Goodhue County, Minnesota. [NR 1990] 340' rock outcropping along the Mississippi River which served as an important geographical landmark for early traders and explorers and earlier had served as sacred burial site for local Dakota Indian tribes.

*Sugar Loaf, Winona County, Minnesota. [NR 1990] 500' rock bluff along the Mississippi River. The local Dakota Indians believed the site to be associated with a historically important Indian leader and therefore an important ceremonial site. The outcropping became an important euroamerican tourist destination during the turn of the century.

Soldiers' Home Reef, Milwaukee County, Wisconsin. [NR 1993] Naturally occurring rock outcropping that served as a unique scientific laboratory for early geological studies in the state.

*Pikes Peak, El Paso County, Colorado. [NHL 1961/NR 1966] Natural peak which served as important geographical landmark and sighting point for early trade and travel.

*Cedar Snags, Halm Creek Fire Site, Shoshone County, Idaho. [NR 1984] Natural areas representing remnant snags and burnt timber stands from the massive 1910 fire, which devastated vast areas of northern Idaho. There are few remaining visible reflections of the fire.
Creek Council Tree Site, Tulsa County, Oklahoma. [NR 1976] Mature Burr Oak marking the termination point of the forced emigration of Creek Nation out of Alabama. The site became an important location for Native Indian ceremonial use, feasts, and celebrations.

*Walker Pass, Kern County, California. [NHL 1961/NR 1966] Site of first (1843) immigrant wagon train trail into California from the east. Associated with early trapper and guide Joseph R. Walker.

*Donner Camp Site, Nevada County, California. [NHL 1961/NR 1966] High Sierras site where the California-bound Donner party of emigrants was marooned by winter storms.

*Granite Pass, Cassia County, Idaho. [NR 1972] 1842 route of the historic California Trail through southern Idaho and northern Utah.

*Lemhi Pass, Lemhi County, Idaho. [NHL 1960/NR 1966] The pass was the point at which the Lewis and Clark Expedition first crossed the Continental Divide. The location eventually became an important transportation corridor for traders, miners, and settlers in the upper Great Basin area.

*Bad Pass Trail, Carbon County, Montana. [NR 1975] Natural pass through mountainous region that served as an important access route for Indians moving from seasonal hunting grounds in southern Montana.

Robidoux Pass, Scotts Bluff County, Nebraska. [NHL 1961/NR 1966] Natural landmark on the old Oregon Trail through western Nebraska.

*Raton Pass, Colfax County, New Mexico. [NHL 1961/NR 1966] Rugged natural pass that served as a major route for the historic Sante Fe Trail through northern New Mexico. The pass became essential to travel during periods of significant military activity associated with the Civil War and later Indian wars.

*Bridger's Pass, Carbon County, Wyoming. [NR 1970] Natural geographic passageway on the Continental Divide in Wyoming that served as a significant transportation and trade corridor during the nineteenth century.

*South Pass, Fremont County, Wyoming. [NHL 1961/NR 1966] Easiest natural passage through the Rocky Mountains, heavily used by westbound traders, settlers, and miners. Traffic through the pass helped establish effective U.S. claims to the Pacific Northwest.

*Union Pass, Fremont County, Wyoming. [NR 1969] Natural geographic passageway on the Continental Divide in Wyoming that served as a significant transportation and trade corridor during the nineteenth century.

*Savanna Portage, Aitkin County, Minnesota. [NR 1973] Site of six-mile portage in north-central Minnesota, which linked the Great Lakes and Mississippi River drainages, enabling significant improvements in early trade and communications in the upper Midwest.

RURAL HISTORIC LANDSCAPES

A geographical area that historically has been used by people, or shaped or modified by human activity, occupancy, or intervention, and that possesses a significant concentration, linkage, or continuity of areas of land use, vegetation, buildings and structures, roads and waterways, and natural features. Many historic rural landscapes contain substantial areas of unimproved or undeveloped land, which significantly influenced the physical organization of the local community and rural land uses (mountains, prairies, rivers, lakes, forests, and grasslands).

Examples include open grazing land on western ranches; lakes, natural springs, and ponds associated with the development of historic resorts; wood lots and farm fields associated with rural agricultural development.

RURAL HISTORIC DISTRICTS LISTED IN THE NATIONAL REGISTER OR DETERMINED ELIGIBLE FOR LISTING

*Lower Willow Creek Rural Historic Landscape District, Gallatin County, Montana [NR 1993] 1500 acres

*Ledoux Rural Historic District, Mora County, New Mexico [NR 1990] 20 acres

*Lindesay Patent Rural Historic District, Otsego County, New York [NR 1995] 9105 acres

*Ashwood Rural Historic District, Maury County, Tennessee [NR 1989] 8300 acres

Little Creek Hundred Rural Historic District, Kent County, Delaware [NR 1984] 2500 acres

Poplar Rural District, Audubon County, Iowa [NR 1991] 1244 acres

Redd Road Rural Historic District, Fayette County, Kentucky [NR 1991] 1646 acres

Boone Creek Rural Historic District, Fayette County, Kentucky [NR 1994] 4060 acres

West Fayette County Rural Historic District, Fayette County, Kentucky [NR 1991] 3702 acres

Hockanum Rural Historic District, Hampshire County, Massachusetts [NR 1993] 752 acres

River Road Historic Rural District, Somerset County, New Jersey [NR 1991] 590 acres

Lindesay Patent Rural Historic District, Otsego County, New York [NR 1995] 9105 acres

Upper Town Creek Rural Historic District, Wilson County, North Carolina [NR 1986] 1755 acres

Woodard Family Rural Historic District, Wilson County, North Carolina [NR 1986] 550 acres

Oley Township Historic District, Berks County, Pennsylvania [NR 1983] 15065 acres

Worth--Jefferis Rural Historic District, Chester County, Pennsylvania [NR 1995] 1800 acres

Ridge Valley Rural Historic District, Bucks County, Pennsylvania [NR 1992] 575 acres

Upper Settlement Rural Historic District, Bosque County, Texas [NR 1983] 2880 acres

San Antonio River Valley Rural Historic District, Goliad County, Texas [NR 1995] 27000 acres

Mad River Rural Historic District, Washington County, Vermont [NR 1994] 1400 acres

Parker Hill Rural Historic District, Windham County, Vermont [NR 1993] 2000 acres

Southwest Mountains Rural Historic District, Albemarle County, Virginia [NR 1992] 31975 acres

Powhatan Rural Historic District, King George County, Virginia [NR 1992] 1092 acres

Green Springs Historic District, Louisa County, Virginia [NR 1973] 14054 acres

North Fork Valley Rural Historic District, Montgomery County, Virginia [NR 1990] 10200 acres

Burke's Garden Rural Historic District, Tazewell County, Virginia [NR 1986] 20000 acres

Honey Creek Swiss Rural Historic District, Sauk County, Wisconsin [NR 1989] 8380 acres

Namur Belgian-American Rural Historic District, Door County, Wisconsin [NR] 3500 acres

[* Represent places located in committee members' states]

U.S. House of Representatives
Committee on Resources
Subcommittee on National Parks, Forests and Lands

Testimony on H.R. 563
March 20, 1996

Floyd J. Buckskin
Cultural Spokesperson, Pitt River Tribe
Headman, Ajumawi Band
Chairman, Native Coalition for Cultural Restoration of Mount Shasta
P. O. Box 1143
Mount Shasta, CA 96067

Honorable Members of the Subcommittee on Parks:

Mount Shasta, Yet'-Achoo has and continues to be a natural geographic landmark of cultural significance to the Pitt River People (Iss a wi) from time immemorial to the present, and into the future.

The Mountain is the terrestrial home of the Creator for the people of Northeastern California, to which we believe he will return soon in the future to examine the work of all mankind and to determine if we have carried out our responsibilities that he gave us at the time of our creation, one of which and most importantly is the role of being the keepers of his home and the land around it.

Mount Shasta stands as an island, a remnant of that natural creation. To allow the continuing encroachment of development and destruction of the environment is an act of cultural spiritual genocide against the Native People, plants and animals, which demonstrates the continuing policy of environmental terrorism which began at Plymouth Rock, an act that appears to have the sole purpose of accomplishing the genocide of the Native People of this Continent.

When the Creator of the universe left this Planet Earth, he told the Pitt River People to watch the Mountain, it would give advance notice of his return and presence. He also said that when a time comes when no snow is left on the Mountain, that we must prepare ourselves, for hard times difficult to deal with would be upon us, and we must rely on our traditional values in order to survive. To continue to see the destruction of the environment threatens our survival as a people. We need these places like Mount Shasta and its many natural resources, its waters, plant and animal life, upon which we must be interdependent.

There are many sacred sites throughout the ancestral lands of the Pitt River Tribe that have an orientation towards Mount Shasta, many of which are documented in archaeological reports, and many more yet unrecorded.

Natural formations such as those created by nature, or believed by the Ajumawi people to be spirit beings transformed into natural features, are as important to the cultural view as archaeological sites, for these are evidence of creative powers and forces.

There are many sites and locations throughout Pitt River territory that are important because of their natural state, or seem to have the appearance of being in a natural state. Many activities and practices by native people left no lasting impact on the land, especially those activities practiced for land management or sacred practices.

It is a very important practice to leave the land, and especially sacred land, in a cleaner and better condition than you found it in.

And yet to say that there are no archaeological sites on Mount Shasta is not entirely true. There are several known, documented sites located on the Mountain.

Due to the nature of the Mountain, there have been eruptions, avalanches, and mudflows throughout history, right up into this century which may have buried any number of sites, making them nearly impossible to discover.

During the early part of this century (approximately 1924) mudflow from the 12,000 foot level of Mount Shasta covered a large area east of the Mountain down onto the McCloud Flats, in some areas measuring in depths of eight feet, resulting in the redepositing and burying of a number of historic and prehistoric sites.

The Pitt River Tribal Constitution empowers the tribe to exercise jurisdiction over our ancestral tribal territory and natural resources of which Mount Shasta is a part. HR 563 attempts to limit that jurisdiction by limiting our right to protect our cultural values in our ancestral territory.

Furthermore, HR 563 is discriminatory to Native Americans as it would exclude properties of religious and cultural significance to Native Americans, and therefore is an act of unequal treatment, as no other ethnic group appears to be the subject of this bill.

HR 563 is contrary to the First Amendment of the U.S. Constitution. By the enactment of the American Indian Religious Freedom Act, Congress expressed its policy: the protection of rights of American Indian tribes and their culture, and the right of native people to have access to sacred sites.

The only legal procedure currently available to ensure that such sites are considered in federal agency planning is the National Register. Prohibiting the recognition of such sites is to deny the native people the hope of having such sites preserved for access and use by native peoples of America. The First Amendment prohibits the making of any law abridging the free exercise of religion.

By the passage of the American Indian Religious Freedom Act, Congress demonstrated an implied intent to protect the rights and culture of the Native American people. HR 563 expressly intends to limit the First Amendment and National Historic Preservation Act with regard to Native American people.

The Pitt River tribe upholds the designation of Mount Shasta as eligible for listing on the National Register, and further opposed the intent to withdraw or reverse Mount Shasta's historic designation, as HR 563 violates the trust relationship between the Native American People and the United States government.

Mount Shasta is much more than a "religious" site, but is composed of traditional gathering areas for natural resources as well as a place for the assembly of Native American tribes in a peaceful manner for trade-commerce council; practices which are still pursued.

The Pitt River Tribe opposes the intent of HR 563 to reverse the designation of Mount Shasta made in March 1994, as HR 563 targets Mount Shasta in particular, and its relationship to Native American people and culture. The criteria that HR 563 proposes for eligibility for inclusion on the National Register of Historic Places, omitting "any unimproved or unmodified natural landscape feature which does not contain artifacts or other physical evidence of human activity," these criteria affect sacred sites through Indian country.

Just as associations with history or cultural practices make Plymouth Rock and Pike's Peak important in the history of Euroamericans, association with traditions makes many natural features important in the history of Native

Americans. HR 563 would deny such importance, not only with respect to Native American traditional places, but with respect to places like Pike's Peak and Phymouth Rock as well.

Yet Achoo (Mount Shasta) is a symbol of the hope held by the Native People of this land, which hope is for the promised return of our Creator Ti kah day Ha da chee, He wi si Yah weh, who will liberate his creation and restore all things to their sacred natural order. Yet' Achoo being the Home of the Creator, we his creation are given a responsibility to take care of these things until his return, which responsibility we carried out until the interruption of these responsibilities by the government of the United States of America during the late eighteen hundreds.

HR 563 would take us back to the policies of the Federal government and the state that were carried out against the Native People at those times. I urge you, with all due consideration of the trust responsibilities that you bear, that you reject HR 563 and uphold all inherent rights of the Pitt River People and all Native People.

TESTIMONY ON HR 563
before the House Subcommittee on National Parks, Forests and Lands

March 20, 1996

Michelle Berditschevsky
Coordinator, Save Mount Shasta Citizens' Group
Spokesperson, Mount Shasta Heritage Council
Secretary, Native Coalition for Cultural Restoration of Mount Shasta
P. O. Box 1143, Mount Shasta, California 96067
Phone and Fax: 916/926-3397

Mr. Chairman, Members of the Subcommittee:

I appreciate this opportunity to be here at your invitation. It is an honor to be able to speak for many people who feel strongly about Mount Shasta and the historic preservation issues currently before this subcommittee, as the introduction of HR 563 threatens cultural values that are vital to a large number of people, both Native American and Euro-American.

Introduction

Rising 14,162 feet into the skies, looming high above the surrounding landscape, is magnificent Mount Shasta, the largest volcanic peak in the continental United States, the dominant geographic feature of Northern California and Southern Oregon.

There are places that coincide with the basic human need to experience sacredness, a deeper dimension, a kinship with all living beings, a place where we can tangibly attune our senses to the earth's relationship with the divine. Symbolizing the sacred has been Mount Shasta's role from the beginnings of human inhabitation, and to which long-standing Native American traditions attests.

The quality of light, the closeness to sky, forms carved by wind, water, ice; delicate alpine flowers; and trees that are thousands of years old, survivors of storms, eruptions and glaciers — all contribute to a total effect that brings us into a presence of forces which are larger and different from the constructed world we have made in human society. Whatever various belief systems call those experiences, they have to do with the timeless, the beautiful and the holy — values which are in danger of extinction in our fast-paced, overindustrialized society. This is what renews and inspires, heals and brings perspective, and this is present on Mount Shasta in an extraordinary way.

Mount Shasta's solitary, mysterious dominance has been sacred to Native Americans since time immemorial as a Center, balancing the forces of the world by uniting energies of heaven and earth. The Mountain embodied the most prominent position in an interconnecting topography of Shasta, Pit River, Wintu, Karuk, Okwanuchu, and Modoc tribal territories. Mount Shasta figures prominently in religious myths and legends that recall significant deeds of times past and, for some tribes, world creation.

Over generations and into present times, Native Americans have used specific sites on Shasta for the training of medicine men and women, for spiritual quests, for healing and guidance. The spiritual power of the Mountain is invoked through dancing, chanting, and

prayer. Because the tribes typically left ceremonial sites in their natural state as the Creator made them, the slopes of Shasta do not appear to contain many archaeological remains. To mark a sacred place in any way would violate its spirit and power.

Constituency

For more than seven years, a number of citizens have been working for the environmental and cultural integrity of Mount Shasta through the Save Mount Shasta Citizens' Group, and in a coalition with Native Americans, through the Native Coalition for Cultural Restoration of Mount Shasta.

Among Native Americans, there is widespread support for recognition and protection of Mount Shasta in its natural state as a sacred mountain. Participants in the Native Coalition for Cultural Restoration of Mount Shasta include the Pit River Tribe, Shasta Nation, Resighini Rancheria, Local Indians for Education, the Intertribal Council of California,[1] the
California Council of Tribal Governments,[2] and Save Mount Shasta.[3]

In addition, resolutions of support for the designation of Mount Shasta as a Historic District, as originally designated in March 1994, have been received from the Native American Heritage Commission, the Advisory Council on California Indian Policy, Keepers of the Treasures, Honor Our Neighbors Origins and Rights, Confederated Modoc and Paiute Tribes, Quartz Valley Reservation, Coquille Indian Tribe, Bridgeport Indian Reservation, Oglala Sioux Tribe, and Timbisha Shoshone Tribe. Furthermore, letters of support have come from the Eastern Pequot Indians of Connecticut, the Scotts Valley Band of Pomo Indians, the Confederated Tribes of Siletz Indians of Oregon, the Confederated Tribes of the Grand Ronde Community of Oregon, and the Association of American Indians. Native Coalition meetings have been attended by people of the Shasta, Pit River, Wintu, Karuk, Modoc, Paiute, and Wyott Tribes, as well as individuals from the Lakota, Cherokee, Hopi, and other tribes.

Nationally and internationally, a sizeable constituency of members the world over value the Mountain's unique natural and cultural quality that links it with other sacred

---

[1]Intertribal Consortium members include the Benton Paiute Reservation, Big Pine Reservation, Big Sandy Reservation, Bishop Paiute Reservation, Blue Lake Rancheria, Bridgeport Indian Reservation, Chemehuevi Reservation, Colusa Rancheria, Cortina Rancheria, Dry Creek Rancheria, Elk Valley Rancheria, Fort Bidwell Reservation, Grindstone Rancheria, Laytonvilla Rancheria, Lytton Rancheria, Manchester-Point Arena Rancheria, Redwood Valley Rancheria, Resighini Rancheria, Santa Rosa Rancheria, Shingle Springs Rancheria, Smith River Rancheria, Table Bluff Rancheria, Timbisha Shoshone Reservation, Trinidad Rancheria, and Upper Lake Rancheria.

[2]A consortium of Federally Recognized Tribal Governments which includes the United Auburn Indian Community, Corina Rancheria, Fort Bidwel Indian Community Council, Grindstone Rancheria, Hopland Reservation, Pit River Tribal Council, Potter Valley Rancheria, Quartz Valley Reservation, Resighini Rancheria, Robinson Rancheria, Rohnerville Rancheria, Sherwood Valley Rancheria, *Susanville Rancheria*, and Upper Lake Rancheria.

[3]A grassroots preservation organization with supporters worldwide dedicated to the environmental and cultural integrity of Mount Shasta.

mountains of the world, such as Mount Fuji, Kilimanjaro and the lofty peaks of the Himalaya. We have collected close to four thousand resolutions, petitions, and letters written by people who value Mount Shasta as a traditional Native American site and as one of the sacred mountains of the world. The Mountain presently draws over 100,000 visitors a year. Through our work, we are asking questions that should have been asked 500 years ago about our relationship to the Native American cultures that have been here for thousands of years and for whom Mount Shasta is of central importance.

The support and loyalty we have received in our efforts demonstrate that Americans value the Native American heritage and its continuance in the present and into the future, not just in museums, but in its living cultures which depend of the integrity and protection of their sacred sites, such as Mount Shasta, at least as much as any Baptist depends on his church.

HR 563 is a misdirected bill

As you are aware, HR 563 would amend the National Historic Preservation Act (NHPA) by prohibiting many places that have religious and cultural importance to Indian tribes from inclusion on the National Register of Historic Places. Specifically, the bill prohibits undeveloped sites that do not contain human artifacts or other obvious evidence of human use from eligibility, rejecting many sites which are pristine. HR 563 is designed particularly to prohibit Mount Shasta from being included on the National Register, even though that designation was already made in March of 1994. That the bill seeks to prohibit Mount Shasta's designation, after this designation has already been made by Executive Order No. 11593, is an illogical contradiction with the bill's claim that designations previously in place will not be affected.

The bill demonstrates a blatant disregard for Native American culture and rights. The lack of understanding at work in this bill is that leaving a place in its pristine state is a deliberate cultural practice associated with a spiritual and ceremonial tradition and world view that are well documented in cases such as Mount Shasta. It is not at all a matter of calling every arbitrary place sacred, although we have much to learn from the contribution that Native Americans have made to world culture through their sacred relationship to the Earth as a whole on which the well being of us all depends. But within this context of sacredness, there are places specifically devoted to spiritual practices, to contacting the Creator, to spiritual quests, to healing and praying. These places have the heightened function of what in the dominanting society is called a church.

The Federal government's role

Although many of us may be looking forward to reduced Federal involvement in our lives, we are not willing to throw out every action of the government just because it is Federal. We believe that the national recognition and protection of certain very special lands such as Mount Shasta is an appropriate activity of the Federal government. The objection to the Mount Shasta Historic District that it was somehow a sneaky way for the Federal government to come and "take" land is not valid here. There was nothing *illegal* or underhanded in the way that the Historic District eligibility was handled. The Forest

Service has a list of interested parties who are notified about each move. City Councils and County Boards of Supervisors were informed every step of the way.

Furthermore, there are areas where the Federal government has a specific and vital role to play, because local prejudice and racism have a stronghold on the population and minorities would otherwise not be protected. Given the history of Native American persecution in California, this is particularly relevant here.[4] When a Native American is brought to justice in California's northernmost counties, the venues have at times had to be changed, because it is so difficult to find an impartial jury. This is the land of the Modoc wars where a tribal culture was wiped out so that a few cattle could graze, and where now a Mountain's designation that is critical to the cultural survival of five surrounding tribes is at risk through this bill. A recent draft Siskiyou County Land Management Plan totally omits protection of Native American culture and leaves this to Federal statutes. To expect the Northern California counties, or the state, to protect Native American cultural interests as HR 563 proposes to do, would be tantamount to making Southern states responsible for the civil rights of Afro-Americans. There is substantial evidence of overt discrimination against Native American religion in the state of California,[5] and HR 563 is a continuation of that discriminatory policy.

HR 563 is unconstitutional

HR 563 is unconstitutional as it discriminates against the free exercise of religion which was re-established by the Religious Freedom Act of 1993. HR 563 affects access to sacred sites, which is fundamentally denied when sacred sites are destroyed by federal actions. It is a regression to the policy which for 150 years denied Native Americans their right to practice their religions.that prevailed until the American Indian Religious Freedom Act of 1978NHPA is the only legal vehicle currently available to ensure that such sites are considered in agency planning, and preserved for access and use by Native Americans. First Amendment prohibits laws abridging free exercise of religion, and access to sacred sites is a basic necessity of Native American religious and cutlural practices.

---

[4]Sherborn Cook, who spent his life studying the Native American holocause in Californria, concluded: "The directed causes of death were disease, the bullet, exposure, and acute starvation. The more remote causes were insane passion for gold, abiding hatred for the Red man, and complete lack of any legal control." See Sherburne F. Cook, *The Conflict Between the California Indian and White Civilization:* 1943, p. 57. This genocide was sanctioned and supported by local, state, and federal government agencies. See Dan McGovern, *The Campo Indian Landfill War: The fight for Gold in California's Garbage,* 1955, p. 67.

[5]See *Larson v. Valente,* 456 US 228, 72 L. Ed. 2d 33, 102. S.Ct. 1673 1982).

HR 563 proposes to terminate federal protection of sacred sites, and leave this to the discretion of the often discriminatory practices of local governments. This would have grave consequences for the trust relationship between the government and federally recognized tribes, which relationship allows the Federal government to act to protect Native American religion.[6] The Supreme Court has "repeatedly held that the peculiar semisovereign and constitutionally recognized status of Indians justifies special treatment on their behalf when rationally related to the Government's unique obligation toward the Indians.[7]

To Native Americans, the destruction of traditional sacred sites is a destruction of their religions. Native Americans commonly believe that their religions must be practiced in the natural settings of their ancestors. To permit unrestrict development of these areas is to permit the destruction of these sites and thereby the destruction of traditional Native American religions and cultures.[8] Protection of Native American sacred sites is therefore essential to the preservation of Native American religion and culture. Thus HR 563 is unconstitutional on both counts of the government's historical obligation to respect Native American sovereignty and to protect Native American culture.

HR 563 impoverishes cultural values

This bill would be an impoverishment of the cultural values protected by the NHPA, a law that expresses this country's commitment to the protection of its cultural heritage. HR 563 seeks to diminish that law, it impoverishes the values that we as citizens are committing to uphold. The criteria for the National Register that HR 563 seeks to abolish are those that recognize a unique aspect of Native American culture: its sacred relationship with the land itself, a deep connection that comes from untold generations of tradition that go back into prehistoric times. This deep connection is different from Euro-American experience and unique to aboriginal culture. NHPA is a law that expresses our commitment to a multi-cultural society.

---

[6]Because of the unique relationship between government and Native Americans, federal courts have held, consistent with US Supreme Court decisions, that protection of Native American religion does not violate the establishment clause. In *Peyote Way Church of God, Inc. v. Thornburgh*, 922 F2d 1210 (5th Cir. 1991), at 1210, the court noted that "tribes remained quasi-sovereign nations which, by government structure, culture, and source of sovereignty are in many ways foreign to the constitutional institutions of the federal and state governments." Quoting the *Santa Clara Pueblo v. Martinez*, 436 US 49, 98 S. Ct. 1670, 1684, 56 L. Ed. 2d 106 (1978), the court found that this unique status of Native American tribes coupled with the equally unique relationship between government and the tribes called for a relaxed standard when applying the establishment clause. The court stated (*Thornburg* at 1216): "The unique guardian-ward relationship between the federal government and Native American tribes precludes the degree of separation of church and state orginarily required by the First Amendment. The federal government cannot at once fulfill its constitutional role as protector of tribal Native Americans and apply conventional separatist understandings of the establishment clause to that same relationship."

[7]Quoted by *Erwin L. Rupert v. Director, United States Fish and Wildlife Service*, (1st Cr. 1992) 957 F.2d 32.

[8]See Vine Deloria, Jr., *God is Red: A Native View of Religion*, 1994, Chapter 16.

HR 563 is misinformed

HR 563 disregards the testimony of experts that went into the NHPA as amended in 1992, and thwarts the influence of professional research in historic preservation policy. For eight years experts worked to introduce a broader standard in historic preservation that includes the protection of sacred sites, because of the unique relationship between culture and religion in Native American civilization, and because of the integral role that sacred sites play in Native American religion. In the same way the Mount Shasta designation was seven years in the making, based on the testimony of traditional Native American cultural leaders, and by experts in archaeology and anthropology.

Two of these experts — Drs. Dorothea Theodoratus and Lee Davis, both highly respected in the field of California anthropology — have studied and documented Mount Shasta's importance, not only to Native American tribes surrounding the Mountain, but throughout California and beyond to the Hopi of Arizona and the Kickapoo of Oklahoma.

Dr. Dorothea Theodoratus conducted the Forest Service Study of Mount Shasta in 1991, which conclusively identified Mount Shasta as a mountain of utmost importance to the tribes surrounding the Mountain and beyond. Based on interviews with many Native Americans and previous field research, the study concludes that "contemporary Indian uses of Mount Shasta are clearly rooted deeply in traditional values and beliefs."[9] Over countless generations, Native Americans have used Mount Shasta for the training of medicine leaders and chiefs, for spiritual quests, for healing and guidance. Because Mount Shasta holds such a central position, and because so much has been taken from Native Americans elsewhere, the mountain represents a commitment to stay with traditional culture, to protect what is significant and sacred in the context of a resurgence of traditional cultural values.

Other anthropologists have given testimony about the extraordinary value that Mount Shasta has for Native Americans throughout northern California and beyond. These include Dr. Thomas Buckley, Chairman of the Department of Anthropology at the University of Massachusetts, who has served as an expert witness and consultant on numerous California issues; Dr. William Bright, Professor Emeritus of Linguistics and Anthropology, UCLA, and currently at the University of Colorado, who is an expert on languages and cultures of Native North America, particularly the Karuk; Dr. Lee Davis, Assistant Professor at the University of Nebraska Anthropology Department, has worked with northern California Native American tribes since 1977, is a consultant for the California Advisory Council on Indian Policy, and has conducted research on indigenous religious and political geography for over 15 years.

---

[9]Dorothea Theodoratus and Nancy Evans, *Statement of Findings, Native American Interview and Data Collection, Study of Mount Shasta, California*, Redding, CA: USDA, 1991, p. 11.

Dr. Davis states: "I cannot state strongly enough the unusual significance of Mount Shasta to northern and central California Indian tribes, people, beliefs, and practices. Mount Shasta is unique, one of a kind in ethnographic regions that comprise the northern 2/3 of California from the Oregon border to the Tehachapi Mountains, from the Pacific coast to the eastern border of the state. For hundreds of tribes in over 40 language families, Mount Shasta was the Captain Mountain, the most sacred geographical region in the state. . . ."

There are many programs aimed at "fixing" Native Americans, but few get at the basic cause, which is the destruction of culture. Mount Shasta is at the heart of Native cultures of this area. Loss of access to the mountain's sacredness would cause irreparable harm which no amount of government programs could ever make up for. Native Americans and people who are closely associated with them understand this, but HR 563 indicates a profound lack of understanding of the issues of the First People of this land. HR 563 does not take into account what the Native Americans are saying, or the testimony of experts.

Amending the NHPA

Mr. Herger claims that the NHPA lends itself to arbitrary misuse and points to Mount Shasta as an example. In reality the Mount Shasta designation is well documented and endorsed by the Native American traditional leaders, as well as experts in the fields of anthropology and historic preservation. Historic Preservation practice is strict and professional about applying criteria to ensure that the law is not arbitrarily applied.

Instead of abolishing all sites left in their natural condition, work should be done to establish criteria for sites that have extraordinary significance, as Vine Deloria, Jr. has suggested. This respected Native American scholar has proposed categories for "places which have transcendent meaning," allowing that Native concepts of the sacredness of lands ultimately elude western rational analysis, and require a willingness on the part of secular society to make room for a world view that has in the past not been fully understood by the dominant culture; a world view that includes the whole of creation which becomes an active participant in ceremonial activities, involving the "other peoples" that are birds, plants, animals, rocks.... Deloria's categories establish some criteria for distinguishing critical sites, in answer to critics who fear that designation of any site would create a dangerous precedent that could imply protection for every rock and tree, since Native Americans considered the entire Earth as sacred. Often critics lose sight of the real issue: what is at stake is the definition of a "context in which the individual and group can cultivate and enhance the experience of the sacred."[10]

Private property

There has been much misinformation about Mount Shasta's eligibility to the National Register of Historic Places, particularly as concerns private land. Currently, there is no private land in the designated area, and Mount Shasta's eligibility has no impact on how private property owners use their property, except where such use requires federal assistance. Mr. Herger's allegations against Mount Shasta's designation are nothing but a

[10]Vine Deloria, Jr., *God is Red, A Native View of Religion*, Golden, CO: Fulcrum Publishing, 1994. Chapter 16.

fiction spread by those who want Mount Shasta for their own agenda of private gain, and who would put five Native American cultures at risk by desecrating a central feature of their spiritual way of life.

There have been allegations that the Historic District will impose limitations on what property owners can do with their residential property within the Historic District or near it. Concerns include control over size of houses, water rights, clearing trees, planting gardens, putting in driveways, etc. The U.S. Department of the Interior Answers to Questions for Owners of Historic District Properties states: "As is the case with formal listing, determinations of eligibility do not restrict the rights of private property owners to do anything they wish with their property, provided that no Federal license, permit or funding is involved."

"A project that complies with the Uniform Building Code and for which no discretionary permit is required, which covers most projects contemplated by landowners, do not fall under CEQA" (CEQA and Historical Resources, Governor's Office of Planning and Research, April 1994).

By no means were all of the private property owners on Mount Shasta opposed to even the original designation at 4000 feet. A random poll to which over 120 property owners responded indicated that 67 were for the Historic District designation, and 56 were against. These figures would be different now that private property is no longer part of the Historic District.

A Historic District is a recognition of culture and establishes a management priority under Multiple Use. It does not confer sovereignty to the culture being recognized, as some detractors have feared. Just as recognition of a Norwegian settlement in Minnesota does not give Norway control of the land, by the same token, Mount Shasta would not become a reservation for the sole use of Native Americans. The Historic District recognizes historic and traditional Native American cultural values and their continuance in present day traditional practices. Public lands on Mount Shasta will continue to be under the jurisdiction of the U.S. Forest Service. The NHPA Section 106 Process is about consultations and mitigations, not "taking" land. This Process finally gives Native Americans a voice, along with other interested parties, in decisions affecting use of public lands.

Conclusion

It is a disgrace to this country that this bill is even being presented. HR 563 is a blatant assault on religious freedom and Native American culture. It specifically singles out criteria for eligibility to the National Register of Historic Places that are uniquely applicable to Native American sacred sites, which were left as the Creator made them in reverence for creative forces that are older than human culture. The bill shows an abysmal ignorance of the depth and beauty of Native American culture, and represents an attempt to return to the shameful Indian policy of cultural genocide long marring this country's history. My family came to this country as Jews who had survived the holocaust, seeking religious freedom here, and I am finding that this country has a unique tapestry of different cultures, among which the Native American cultures hold a special place as First

People of this land, who for over 10,000 years had sustainable cultures in harmony with the land. I was appalled that the conditions that allow the American ideal of freedom of religion are not extended to the First People of this land.

It is not possible to roll back the past, but we can proceed into the future with more respect for the Native American ethic of sacredness of place. A Wintu traditional leader, Frank LaPeña, said, concerning the special relationship to a place: "You don't have to deprive yourself of that. It is really up to you. It is always available. You can awaken this aspect of place if you make your own connection with it." He is speaking of an experience that is beyond the ordinary, one that puts everything else into perspective.

I admonish the members of this Subcommittee not to deprive themselves and all humankind, as well as future generations, of the rich heritage of Native American sacred sites, and of the solace, vast peace and healing that one derives from connection with ancient sacred places such as Mount Shasta.

This bill is hardly worth the Parks Subcommittee's serious consideration. It basically says that only criteria that apply to white folks' history should be used in determining eligibility to the National Register, and that other cultures are to be disregarded where they do not fit the ethnocentric mold. It also says that Mount Shasta was found to be eligible according to criteria that apply to Native American culture, but that this can arbitrarily be reversed after the fact. It is a blatant attempt to discriminate, and it is an absolute disgrace to this nation to think about continuing a racist policy toward the first inhabitants of this land. HR 563 is unconstitutional, ethnocentric and discriminatory. I thank you for your attention and urge your rejection of this bill.

SANT' ANGELO & TROPE
A PROFESSIONAL CORPORATION
ATTORNEYS AT LAW
23 NORTH AVENUE EAST
CRANFORD, NEW JERSEY
07016

ALAN A. SANT' ANGELO
(1955-1993)

JACK F. TROPE

(908) 272-2666

FAX: (908) 272-0794

TESTIMONY FOR THE ASSOCIATION ON AMERICAN INDIAN AFFAIRS, INC.
BY JACK F. TROPE, COUNSEL

SUBMITTED TO
THE HOUSE RESOURCES COMMITTEE
SUBCOMMITTEE ON NATIONAL PARKS, FORESTS AND LANDS

HEARING ON H.R. 563 AND THE NATIONAL HISTORIC PRESERVATION ACT

MARCH 20, 1996

I. INTRODUCTION

I am counsel to the Association on American Indian Affairs, Inc. (AAIA), a national non-profit Indian rights organization headquartered in South Dakota. AAIA has long been involved in efforts to protect the ability of traditional Native Americans to practice their religions and cultures and has been directly involved in efforts to protect sacred sites such as the Medicine Wheel in Wyoming.

AAIA strongly urges you to oppose the enactment of H.R. 563. H.R. 563 would make traditional cultural properties which do not contain physical evidence of human activity ineligible for inclusion on the National Register of Historic Places. This bill reflects either ignorance about the nature of Indian history and culture or a knowing assault upon traditional Indian people and their religions. Regardless of which is the case, H.R. 563 is bad policy and should not be enacted.

In addition, AAIA urges Congress to reauthorize the National Historic Preservation Act (NHPA). The NHPA has provided an opportunity for Indian people to have input into decisions which may seriously and irrevocably affect their ability to continue to exercise their traditional religions and cultures. In reauthorizing the NHPA, it is critical that no changes be made to the Act which would interfere with the right and ability of Indian people to consult with the federal government whenever sites which are culturally or religiously important may be affected. In addition, recent changes to the Act which strengthen the role of tribal historic preservation programs must be reaffirmed.

Although AAIA is strongly supportive of the provisions in the

NHPA which pertain to tribal historic preservation programs, it understands that the Keepers of the Treasures will address this issue in depth in its testimony. Thus, the primary focus of this testimony will be the role which the NHPA plays in providing Indian people with a mechanism for input into governmental decisions that may affect their traditional cultural and religious sites.

II. BACKGROUND

The Nature and Importance of Sacred Sites[1]

Land and natural formations are inextricably connected with the practice of traditional Native American religions and cultures. Unlike Western religions, tribal religions are not theological in the sense of incorporating a written set of universal truths about God and God's relationship with humanity. Rather, the continuation of traditional Native religions and cultures takes place through the performance of ceremonies and rituals which may generate dreams and visions. These ceremonies and rituals are often performed at specific sites. These sites may be places where spirits live or which serve as bridges between the temporal world and the sacred.

Traditional sacred places may be related to tribal creation stories and other historical events of religious significance. They may also be sites with special geographical features, burial sites, areas where sacred plants or other natural materials are available, or structures, carvings or paintings with religious significance which were made by tribal ancestors -- for example, medicine wheels and petroglyphs. For some tribal religions, there may be no alternative places of worship. The required ceremonies must be performed at certain places to be effective.

The Contemporary Problem

A significant number of those sites which are known to be sacred to traditional Indian religions and cultures are located on what is currently federal land. Resource development such as mining, logging and tourism can sometimes conflict with the use of lands by traditional Indian people.

Current legal protection: In general

As a result of the Lyng v. Northwest Indian Cemetery Prot.

---

[1] In traditional Indian societies, culture and religion are intertwined. Collectively, such activities represent a "way of life". Thus, where this testimony refers to preservation of Indian religion and sacred sites, this should not be understood merely in a "spiritual" context, but also in the broader context of cultural history, integrity and survival.

Assn. decision by the United States Supreme Court in 1988, the First Amendment to the Constitution provides little protection for the sites which are necessary for the practice of traditional Native religions. The Court in the Lyng case also held that the American Indian Religious Freedom Act, enacted in 1978, is a policy statement only, "has no teeth" and is not enforceable by the courts. For these reasons, the National Historic Preservation Act has become one of the few mechanisms available for the resolution of disputes which concern these sites, which are referred to as traditional cultural properties in the lexicon of the historic preservation community.

The National Historic Preservation Act

As you know, the NHPA establishes a process whereby federal agencies who are engaged in an undertaking must determine if the undertaking will have an adverse impact upon an historic property. Where there is an adverse impact, the agency, State Historic Preservation Office (SHPO) and (if it so chooses) the Advisory Council on Historic Preservation (Advisory Council) consult on methods for mitigating the effects of the undertaking. If the parties can agree upon mitigation measures, a Memorandum of Agreement is usually executed. The consulting parties may invite other parties to take part in the agreement as consulting parties and are also required, in certain circumstances, to consider input from certain interested parties before entering into such agreements. If agreement cannot be reached, the Advisory Council is given the opportunity to comment on the undertaking. Once it has done so, the agency may proceed with the undertaking as it sees fit.

NHPA regulations adopted in 1986 require that where Indian traditional cultural properties are involved, Indian tribes shall be provided with "the opportunity to participate as interested persons." Moreover, "[t]raditional cultural leaders are considered to be interested persons with respect to undertakings that may affect historic properties of significance to such persons."

A 1992 amendment to the NHPA has strengthened this requirement. It provides that "a Federal agency shall consult with any Indian tribe or Native Hawaiian organization that attaches religious and cultural significance" to a property which falls under the Act.

How the NHPA can work in practice: Medicine Wheel

As counsel to the Medicine Wheel Coalition on Sacred Sites of North America, an intertribal coalition of traditional Indian people, I have been directly involved in NHPA negotiations. I believe that it would helpful to the Committee to describe one such negotiation process in which the NHPA process succeeded in bringing together competing interests to develop and implement a program to

protect an important traditional cultural and sacred site in a manner acceptable to most of the Indian and non-Indian communities.

The Big Horn Medicine Wheel is a stone circle approximately 80 feet in diameter with twenty-eight spokes extending from a central cairn to the perimeter. It was constructed hundreds of years ago by Plains Indians and is located at an altitude of 10,000 feet in the Big Horn National Forest of Wyoming. To Plains tribes, it is an important and powerful religious site actively utilized by traditional religious practitioners of those tribes. The site has been designated as a National Historic Landmark by the federal government.

In 1988, the Big Horn National Forest prepared a Draft Environmental Assessment which proposed the building of a viewing platform at the Wheel, upgrading of the road near the Medicine Wheel, a visitor's center, continued vehicular access within 100 feet of the Medicine Wheel and no provision for the religious use of the site or the overall protection of the integrity of the site. In response to this proposal, traditional communities within several tribes with an interest in the Wheel mobilized in opposition to this proposal. The Wyoming SHPO, the Advisory Council and the Medicine Wheel Alliance, an activist group including both Native Americans and environmentalists, also opposed the plan.

As a result of the opposition to the proposed development, the United States Forest Service began to hold a series of large public meetings in 1989 and 1990. In October 1991, the Big Horn Forest commenced the National Historic Preservation Act section 106 process. In January 1992, the Forest Service, Advisory Council and Wyoming SHPO agreed that the Medicine Wheel Coalition should be given consulting party status. Later that year, the Medicine Wheel Alliance and Wyoming Big Horn County Commissioners were also granted consulting party status.

Finally, after a series of additional public meetings and private negotiating sessions, a Memorandum of Agreement was signed by the six consulting parties in May 1993. The MOA provided that tourist vehicular traffic to the Medicine Wheel would be prohibited except for handicapped access and that tourists would be required to park approximately 1 1/2 miles from the Wheel and hike to the Wheel from that location. In addition, Native American interpreters would be posted at the Wheel during tourist season and twelve days would be set aside for traditional ceremonial use by Native Americans without disturbance. Vehicular access to areas northwest of the Wheel by ranchers and hunters would continue to be allowed via the Medicine Wheel road so long as those individuals did not stop or park at the Wheel.

In August 1994, the parties to the MOA, as well as the Federal Aviation Administration which operates a radar dome on nearby

Medicine Mountain, entered into a Programmàtic Agreement. The PA continued the interim MOA management procedures for 1995 and also provided for procedures governing the development of a Historic Preservation Plan (HPP) by June 1, 1996, completion of an ethnographic study with the goal of setting appropriate boundaries for the National Historic Landmark, and a moratorium on final approval of undertakings within a 2 1/2 mile radius of the Wheel pending completion of the HPP.

Thus, enormous progress in protection of the Wheel as a traditional religious and cultural site has occurred, but, at the same time, the needs and viewpoint of the local non-Indian community have also been incorporated into the agreement. Local economic interests have been protected through the provision of continued access by ranchers and hunters to areas northwest of the Wheel and access by tourists (albeit by foot) to the Wheel itself. Indeed, the overwhelming consensus has been that the tourist experience has been enhanced by the change in the mode of access. Thus, the National Historic Preservation Act has served as a mechanism for ensuring that all interests are considered and appropriate protection of the site has occurred.

III. LEGISLATION IN THE 104TH CONGRESS

H.R. 563 is bad policy

H.R. 563 would make traditional cultural properties which do not contain physical evidence of human activity ineligible for inclusion on the National Register of Historic Places. Thus, the procedures of the NHPA would not apply to such sites.

Yet, in some cases, the very absence of evidence regarding human-induced changes to a site might be a result of the historic sacredness of the site to the tribe which would make it inappropriate to alter the site in any way. Thus, linking eligibility for the National Register to evidence of human activity at a particular site might actually disqualify some of the most significant Native American sites from receiving protection. This makes no sense and can only be viewed as a frontal assault (whether intentional or inadvertent) upon the efforts of Indian people to preserve their history and special sites. If Mount Sinai were located in the United States, there is no question that it would qualify as a historic site worthy of protection. Yet this bill would deny tribal Mount Sinais any protection. These sites have long been accepted as appropriate for designation and protection under the National Historic Preservation Act.

H.R. 563 would change this accepted policy for no reason other than the sponsor's apparent disagreement with the designation of a particular local site in his district. This bill would deprive Indian people of an important mechanism which allows their concerns about such sites to be heard and considered by the federal

government. AAIA urges you to oppose any effort to enact H.R. 563 into law.

Reauthorization of the NHPA is needed

AAIA has long urged that strong legal protection be provided to traditional cultural and sacred sites. It was a founding member of the American Indian Religious Freedom Coalition, established in 1990, which has sought enactment of an American Indian Religious Freedom Act which would be enforceable in the courts.

Those efforts have not been successful and current law provides only limited protection of sacred sites. The National Historic Preservation Act is one of the few mechanisms available to Indian traditional people and tribes seeking to protect such sites. In many cases, it is inadequate to protect such sites, but in some cases it can provide a mechanism for Indian people, the government and development interests to discuss and develop plans to mitigate the impact of development upon sacred sites. It is important that this mechanism remain intact and, if at all possible, be strengthened.

Certainly, in reauthorizing the NHPA, it may be possible to make the NHPA work more efficiently. But any changes must ensure that the requirement of consultation with Indian people remains unchanged and that the government have the resources to adequately consult. In this regard, AAIA would specifically note that proposals to close the Western office of the Advisory Council on Historic Preservation or to terminate the Advisory Council itself are misguided. The Western office has helped to facilitate meaningful dialogue between Indian people, land management agencies and development interests and it is important that it continue to serve in that capacity. In addition, as previously noted, continued support in the NHPA for tribal historic preservation programs is critical.

Thank you for considering this testimony.

March 11, 1998

Congressman Wally Herger
House of Representatives
Washington, D.C.

Dear Congressman Herger:

The Keeper's November 18, 1994 decision does not change the fact that Mount Shasta IN ITS ENTIRETY is a Sacred Site and eligible for the National Register of Historic Places. One person cannot determine if something has lost its integrity if they do not understand what it is, that has the integrity. When a volcano erupts, it does destroy the vegetation and other life upon its sides. It does not, and cannot destroy the fact that the mountain is a volcano, it actually adds to it. The eruption does not destroy the integrity of the mountain.

For example, if the Shasta-Trinity National Forest Service goes and cuts down all the trees on Mount Shasta, they cannot destroy the integrity of Mount Shasta. The trees will grow again. The life forms (trees included) living on Mount Shasta also have their own integrity, they represent the people who have died upon the Mountain, and they represent the Mountain itself. The integrity of Mount Shasta is, and no matter what happens to it, it will always be a Sacred Mountain IN ITS ENTIRETY, long after we are gone.

One of my concerns are that you will not take into consideration the Sacred Sites on Mount Shasta that are sacred to me and the Shasta People. The site called "Waka's Chair" is especially significant to Shasta People. It is located where the old ski bowl was and Bunny Flats. This is the spot where our Creator sat after creating our world for us. This site has been identified over and over for the Shasta-Trinity Forest by myself and others as a very significant site to the Shasta People.

My greatest fear is that the Representatives of the Government of the United States will allow the pressure placed on them by people who value money more than anyone else's heritage take precedent over the laws that have been in place, namely the National Historic Preservation Act. This would be a desecration of a very important law for the people of the United States and shows a total lack of respect towards the people in the United States on your part, Congressman Herger.

If one site is allowed to be removed from the Eligibility Listing of the National Register of Historic Places, how many other places will be removed in order to put golf courses, condominiums, RV parks, ski parks, and mini malls in their places. This is just the beginning of a campaign to destroy the sacred and important historical sites in the United States.

Congressman Herger
March 11, 1996
Page two

I am not asking that you believe as I do, but I am asking that you respect the beliefs of others, respect the sacred sites of others as you would any other church built in the United States. Showing your respect would be that you do not remove the Eligibility status of Mount Shasta as a sacred site.

Sincerely,

Mary Carpelan

Mary Carpelan
P. O. Box 773
Yreka, CA 96097

March 15, 1996

Walley Herger, Congressman
House of Representatives
Washington D C

Mr. Herger,

The Shastas have grave concerns regarding the bill HR563 designed to abolish Mount Shastas Historic Designation. It concerns us deeply that an elected representative would allow the pressure placed on them by a few monied constituents to take precedence over the National Historic Preservation Act.

As you know, Sacred Sites do not need physical evidence of existence. It would be greatly appreciated that you address our concerns by not removing the Eligibility Status of Mount Shasta.

In this bill a dangerous precedent is being set to disregard the Customs and Culture of the Aboriginal Americans who have the deepest ties to the land and greatest concerns that all of our natural resources both renewable and non, be protected and managed in the best interests of all people. Irreparable damage will be done both physically and spiritually to all Tribes across the United States by your actions. As our elected official you have an responsibility to represent the best interest of all your constituents.

Sincerely,

Roy V. Hall Jr. Chairman

Roy V. Hall, Jr.

I

104TH CONGRESS
1ST SESSION

H. R. 1179

To authorize appropriations for the preservation and restoration of historic buildings at historically black colleges and universities.

IN THE HOUSE OF REPRESENTATIVES

MARCH 9, 1995

Mr. CLEMENT (for himself and Mr. DUNCAN) introduced the following bill; which was referred to the Committee on Resources

---

A BILL

To authorize appropriations for the preservation and restoration of historic buildings at historically black colleges and universities.

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

SECTION 1. SHORT TITLE.

This Act may be cited as the "Historically Black Colleges and Universities Historic Building Restoration and Preservation Act".

SEC. 2. FINDINGS.

Congress finds that—

(1) the Nation's historically black colleges and universities have contributed significantly to the ef-

fort to attain equal opportunity through postsecondary education for African-American, low-income, and educationally disadvantaged Americans;

(2) over our Nation's history, States and the Federal Government have discriminated in the allocation of land and financial resources to support these institutions, thus forcing them to rely on the generous support of private individuals and other charitable organizations;

(3) the development of this source of private and charitable financial support for historically black colleges and universities has resulted in structures and buildings of historic importance and architecturally unique design on the campuses of these institutions; and

(4) many of these structures and buildings are national treasures worthy of preservation and restoration for future generations of all Americans as well as for the students and faculty of these institutions.

SEC. 3. PRESERVATION AND RESTORATION GRANTS FOR HISTORIC BUILDINGS AT HISTORICALLY BLACK COLLEGES AND UNIVERSITIES.

(a) AUTHORITY TO MAKE GRANTS.—From the amounts made available to carry out the National Historic

Preservation Act for the fiscal years 1996 through 1999, the Secretary of the Interior shall make grants in accordance with this section to eligible historically black colleges and universities for the preservation and restoration of historic buildings and structures on the campus of these institutions.

(b) GRANT CONDITIONS.—Grants made under subsection (a) shall be subject to the condition that the grantee covenants, for the period of time specified by the Secretary, that—

(1) no alteration will be made in the property with respect to which the grant is made without the concurrence of the Secretary; and

(2) reasonable public access to the property with respect to which the grant is made will be permitted by the grantee for interpretive and educational purposes.

(c) MATCHING REQUIREMENT FOR BUILDINGS AND STRUCTURES LISTED ON THE NATIONAL REGISTER OF HISTORIC PLACES.—(1) Except as provided by paragraph (2), the Secretary may obligate funds made available under this section for a grant with respect to a building or structure listed on the National Register of Historic Places only if the grantee agrees to match, from funds

derived from non-Federal sources, the amount of the grant with an amount that is equal or greater than the grant.

(2) The Secretary may waive paragraph (1) with respect to a grant if the Secretary determines from circumstances that an extreme emergency exists or that such a waiver is in the public interest to assure the preservation of historically significant resources.

(d) FUNDING PROVISIONS.—(1) Not more than $23,000,000 for fiscal year 1996 may be made available under this section.

(2) Of the amounts made available under this section for fiscal year 1996, $5,000,000 shall be available only for grants under subsection (a) to Fisk University.

(3) Of the amounts made available under this section for fiscal year 1996, $8,000,000 shall be made available only for grants under subsection (a) to Knoxville College.

(4) Of the amounts made available under this section for fiscal year 1996, $10,000,000 shall be available only for grants under subsection (a) to those historically black colleges and universities identified for inclusion in the Department of the Interior Historically Black College and University Historic Preservation Initiative.

(e) REGULATIONS.—The Secretary shall promulgate such regulations as may be necessary to carry out this Act.

SEC. 4. DEFINITIONS.

For the purposes of this Act:

(1) The term "historically black colleges and universities" has the same meaning given the term "part B institution" by section 322 of the Higher Education Act of 1965 (20 U.S.C. 1061).

(2) The term "historic building and structures" means a building or structure listed on the National Register of Historic Places or designated a National Historic Landmark.

TESTIMONY

before the House Subcommittee on

National Parks, Forests and Lands

by Dr. Henry Ponder, President, Fisk University

March 20, 1996

Mr. Chairman and Members of the Subcommittee:

It is a pleasure to again come before you to urge completion of a joint project that Fisk University has been pursuing with the help of Congress, since 1989. We were pleased in 1994 to welcome the inclusion of eleven other sister institutions selected through the UNCF/Department of the Interior initiative, because of the similarity of their goals. We now also welcome the inclusion of Knoxville College because of their admirable objectives and severity of need. I therefore urge you to approve H.R. 1179.

Through various volunteer positions of leadership and service, I have had the opportunity to travel to most of our nation's Historically Black Colleges and Universities. Many of our HBCUs were founded following the Civil War, especially those that are part of the UNCF. A large number of these campuses have one or more buildings that date back to this period. These older buildings are treated by the colleges and by students with a great deal of respect and reverence. One reason for this is that funding to replace them would be extremely difficult or impossible to come by. Another - and I feel, much more important reason - is that our students realize what those buildings symbolize and where they have come from. These buildings stand as reminders of forbears who recognized the importance of higher education and what a college education could do to help a young man or young woman to get ahead in this world. The buildings remind hundreds of thousands of our alumni how they got where they are today. They stand too, as reminders of those who were denied the opportunity for education, but who worked to the limits of their ability to see that their children were allowed to go as far as their minds could take them. These historic academic buildings are extremely important to African Americans.

I expect that other campuses are like ours, in that every year there are large numbers of visitors who want to see where grandparents went to college, or where parents went to school, or where cousins or aunts have attended. Attendance at college is a major event that is passed from one to another in oral histories and stories and anecdotes. Colleges and their older buildings play an important role in the history of African Americans. The buildings provide a stable reminder of order and truth and the thirst for knowledge that allowed African Americans to make real progress in America. These buildings must be preserved and restored because of what they stand for in the American history of African Americans. They must also be preserved for the continuing use of today's students and for use by those that are coming behind us. Unlike living things, buildings can be restored to live on and serve many future generations. We must preserve our history and allow it to serve our future.

At Fisk University, history is exceptionally important - and it should be - for we have had a glorious one. Our history is passed down to each new incoming class of Freshman. It is an honor for a Fisk woman to reside in Jubilee Hall - our first building, constructed in 1876 - and now designated by the U.S. Park Service as a National Historic Landmark. Fisk students went out on a singing tour to raise the money for its construction. This group was particularly good at singing so called "slave songs" which were arranged by their music professor. The young "Fisk School" needed funds to continue operating and the group - the Jubilee Singers - were sent out to tour America, Europe and parts of Africa to introduce the world to the "Negro Spiritual" - the first uniquely American art form. Eventually they sang before President Grant, Mark Twain, William Gladstone, Johann Strauss, Queen Victoria and many other dignitaries. Plain folk, as well, were moved to tears by the plaintive beauty of their songs. The needed funds were raised, Jubilee Hall was built, and Fisk was saved. Jubilee Hall stands today as the first permanent structure built for the education of African Americans in the U.S.

This is - briefly - the story of just one of Fisk's historic buildings. We have a total of nine that are listed by the U.S. Park Service on the National Register of Historic Places. The entire campus has been designated by the Park Service as the "Fisk Campus Historic District". Since 1989 we have been working with the Congress to restore six of these buildings that were in greatest need. To date, five of these buildings have been faithfully restored under the guidance of the Park Service.One restoration, that of the Fisk Chapel, has won a total of seven awards - from among others, The Tennessee Historical Commission, The American Institute of Architects Tennessee Chapter, The Victorian Society in America and, most recently, by the National Trust for Historic Preservation. This latter award is probably the most prestigious, not just because it comes from the well-known National Trust, but also because of the judging criteria. The National Trust makes its awards not only for the faithfulness and quality of the restoration, but also based on the use of the building. There are non-denominational services held regularly in the Chapel, but there are also academic convocations, lectures, concerts, filmings, tapings, seminars, weddings, funerals and other events which welcome the community. Architecturally, the Chapel is the center of the surrounding community, which was once the heart of Nashville's African American population. As that population dispersed in the 60s, 70s and 80s, the neighborhood became seriously deteriorated. With restorations at Fisk and other community development activities, many sponsored by Fisk, the University is leading North Nashville's redevelopment. The community is coming alive again with returning businesses, and new commercial and residential development. It is this leadership force that was recognized by the National Trust in their award.

Other buildings that have now been completely restored under this program, include the Little Theatre, which once served as a hospital barracks during the Civil War and the 1876 Harris House, Italianate in style, which originally was built as the home of Reverend Richard Harris. Reverend Harris served as one of the first African American Trustees of Fisk University. All eight children of the Harris Family received Fisk degrees and two descendants are recent Fisk graduates. The Harris House presently serves as our Music Building. The great African American concert singer, Roland Hayes, received much of his musical training here.

Two restoration projects have recently been completed, one funded by a Congressional appropriation. The Academic Building was designed by Fisk graduate Moses McKissack. Moses

McKissack and his brother founded one of the first African American architectural firms in this country. This company is still in business today as one of the oldest African American-owned firms in America. The Academic Building served as Fisk's first library and funding for its construction was provided by philanthropist Andrew Carnegie. Then Secretary of War, William Howard Taft, came to Nashville for the ceremony to lay the cornerstone of this architecturally eclectic building.

Fisk successfully secured $2.2 million in funding, on our own, for the restoration of our historic Talley-Brady ScienceBuilding. We competitively sought and were awarded an $800,000 challenge grant for the rehabilitation of this building which is also listed on the National Historic Register. In a major fund raising effort, over a period of several years, we successfully raised the $1.4 million needed to match the challenge, from alumni, corporations, foundations and interested individuals. The building was completed last spring. Talley-Brady Hall, named after two eminent Fisk scientists, has been the site of research projects that have been carried aboard NASA spacecraft.

On an independent basis, Fisk has been seeking funding for the renovation and repair of many of our non-historic campus buildings. Spence Hall and Park-Johnson Hall have now been completely renovated and extensive repairs made to four others.

Of the nine buildings listed on the National Register of Historic Places, one major building now remains, which has not had significant renovation or restoration since its construction in 1931. The Cravath Library was built when Fisk University outgrew its Carnegie Library. This library too was outgrown and now serves as the University's Administration Building. It is "Academic Gothic" in architecture and was very likely one of the last such buildings constructed in this style. With dramatic gothic arches, stone fireplaces in reading rooms, leaded glass windows, paneled walls and masonry ornamentation, the production of this style building has been considered prohibitively expensive for many years. The significance of the building is substantially enhanced by a series of murals painted by the Harlem Renaissance artist Aaron Douglas. Aaron Douglas served for many years on the Fisk faculty and is also known for a similar set of murals painted for the New York Public Library. Plumbing and electrical infrastructure systems are now failing. In spite of installation of a new roof, the need for tuck pointing and weather proofing allows serious water seepage into the building. Architects advise that complete restoration is the only solution to saving the structure.

Over time - and in these nine historic buildings - some of the most noted intellectuals in our country - of all races - have served on the Fisk faculty. Completion of the restoration of these buildings on the Fisk University campus - in addition to preserving important parts of African American cultural and educational history - will provide our students, faculty and administrators with spaces for classrooms, labs and offices which are <u>not</u> grandiose or luxurious, but are highly utilitarian, clean and in compliance with codes. This is in keeping with the way we have always done things at Fisk University. For 130 years Fisk University has been devoted to providing education of the highest quality. It seems highly fitting that this distinguished record be acknowledged by assuring that these historically and culturally significant structures, with their distinctive architecture, <u>remain</u> in continuing service to the education of young African Americans.

Recently, for the fifth consecutive year, Money magazine has named Fisk University as one of the "best values" among higher education institutions across the country. This, of course, reflects the fact that our tuition is deliberately kept to a modest $3370 per semester. Funds like that do not allow us to create reserves for restoration of historic buildings. More important than cost, our selection by Money magazine speaks to the fact that at Fisk University, we provide an education of the highest quality. These days we are hearing much about the importance of quality. In education, it is no less important than in manufacturing. Fisk University's charter, written in 1867, states that the University "shall measure itself by the highest standards, not of Negro education, but of American education at its best". This has been the guiding principle of Fisk University for 130 years. As evidence, let me offer the following fact. In proportion to our size - or as a percentage of enrollment, far more graduates of Fisk University achieve the Ph.D. degree than the African American graduates of any other U.S. educational institution - whether historically black or predominantly white.

Fisk does not seek the slick accoutrements of high education enjoyed by many of our larger, more affluent colleges and universities. We do strive to maintain with some degree of pride and dignity, our historical position as a leader in education, our unequivocal devotion to educational excellence and our role as a symbol of the advancement that can be achieved through higher education. We respectfully urge you to allow the continuation of Fisk University's historic building restoration program, by giving your approval to H.R. 1179. Help us to keep alive the tradition of educational excellence which these buildings embody. Such assistance sends a message nationally, to Americans of all races, that our history is to be treasured and that educational excellence is to be sustained. Through excellence and hard work in all endeavors, this country has achieved, and will retain its position of world leadership.

Mr. Chairman and Members of Congress, we are sincerely grateful for the assistance that has been previously provided by Congress for this project. We are grateful as well for your attention and your consideration of this request. Thank you.

STATEMENT OF KATHERINE H. STEVENSON, ASSOCIATE DIRECTOR, CULTURAL RESOURCE STEWARDSHIP AND PARTNERSHIP PROGRAMS, NATIONAL PARK SERVICE, DEPARTMENT OF THE INTERIOR, BEFORE THE SUBCOMMITTEE ON NATIONAL PARKS, FORESTS, AND LANDS, HOUSE COMMITTEE ON RESOURCES CONCERNING H.R. 1179 TO AUTHORIZE APPROPRIATIONS FOR THE PRESERVATION AND RESTORATION OF HISTORIC BUILDINGS AT HISTORICALLY BLACK COLLEGES AND UNIVERSITIES.

March 20, 1996

Thank you for the opportunity to present the Department of the Interior's views on H.R. 1179, which authorizes the Secretary of Interior to make matching grants of $23 million to Historically Black Colleges and Universities to preserve and repair buildings listed on the National Register of Historic Places. Under this bill, the grants to Historically Black Colleges and Universities would be made under the authority of Section 101 of the National Historic Preservation Act. While the goal of this legislation is admirable, we must oppose H.R. 1179.

We are supportive of any initiative to provide assistance to preserve significant historic buildings on the campuses of historically black colleges. Indeed, the President issued in November 1993 an Executive Order establishing in the Department of Education the President's Board of Advisors on Historically Black Colleges and Universities and directing each department to develop an annual plan for its efforts to increase the ability of historically black colleges and universities to participate in federally sponsored programs. The administration certainly recognizes that these are important national historic treasures worthy of our care and attention. However, because of the limited level

of appropriations from the Historic Preservation Fund for grants to States, Indian Tribes, and the National Trust for Historic Preservation we cannot support the legislative earmarking of funds to these colleges. There are other, equally worthy minority-related projects, as well as other numerous historic buildings, in need of assistance for deferred repairs. Nor do we support earmarking funds for specific target sites, such as under Section 3(d)(2) and (d)(3) of the proposed bill which provide funds specifically for Fisk University and Knoxville College.

The Secretary of the Interior took the initiative to include funds for Historically Black Colleges and Universities in the budget under current authorities because of an identified need. This action points out the important flexibility now built into the National Historic Preservation Act for this type of special initiative and it illustrates that adequate funding authority currently exists. Within this limited budget authority, special initiatives of this type can continue to address a broad range of needs. We do not support earmarking funds because it restricts this capability.

H.R. 1179 would authorize appropriations from the Historic Preservation Fund of not more than $23,000,000 for fiscal year 1996. Of the amount to be appropriated, $5 million would be made available for grants only to Fisk University and $8 million for grants only to Knoxville College, with $10 million more being made available for grants to the eleven historically black colleges and universities identified in the Department of the Interior's Historically Black Colleges and Universities Initiative. I note for the record that neither Fisk University and Knoxville College are among the eleven Historically Black Colleges and Universities prioritized in the Department's Initiative, which involved a national assessment of the most significant and deteriorated Historically Black Colleges

and University properties for critical attention.

Funding for this bill would be subject to the Administration's budgetary priorities consistent with the Budget Enforcement Act of 1990.

This concludes my prepared testimony, Mr. Chairman. I would be pleased to answer any questions you may have.



Ferrell H. Secakuku
CHAIRMAN

Wayne Taylor Jr.
VICE-CHAIRMAN

SUBCOMMITTEE ON NATIONAL PARKS
FOREST AND LANDS

COMMITTEE ON RESOURCES

U.S. HOUSE OF REPRESENTATIVES

APRIL 03, 1996

OVERSIGHT HEARING ON
HISTORIC PRESERVATION

TESTIMONY OF

FERRELL SECAKUKU
CHAIRMAN AND CHIEF EXECUTIVE OFFICER
THE HOPI TRIBE

P.O. BOX 123 — KYKOTSMOVI, ARIZONA — 86039 — (520) 734-2441

Testimony before the Subcommittee on National Parks, Forests, and Lands
Committee on Resources
U.S. House of Representatives

Mr. Chairman, on behalf of the Hopi people, I, Ferrell Secakuku, Chairman of the Hopi Tribe, welcome this opportunity to testify before this subcommittee and wish to thank you and the committee for your support of our nation's heritage. The Hopi Tribe is comprised of approximately 10,000 Hopi people who occupy twelve villages within the Hopi Reservation in northeastern Arizona. The Hopi Reservation encompasses lands that the Hopi people have inhabited for more than a thousand years. Unlike other Native American tribes in the United States, the Hopi people have never been relocated from their ancestral lands to other geographical areas by the United States government.

The Hopi people emerged into this, the Fourth World, from the Sipapuni, a limestone cone located in the gorge of the Little Colorado River near the Grand Canyon. Upon emerging, we encountered *Ma'saw*, the guardian of the Fourth World. A spiritual pact was made with *Ma'saw*, wherein we as Hopis would act as stewards of the earth. As a part of this pact, we vowed to place our footprints throughout the lands of the Fourth World as we migrated in a spiritual quest to find our destiny at the center of the universe. All Hopi clans embarked on a lengthy series of migrations that led us throughout the Southwestern United States and beyond, settling for a time in various places. Eventually, our priests would receive omens and spiritual signs, either through some supernatural phenomenon, or a natural event like pestilence or earthquake, that directed the Hopi people to continue our migrations. After many generations, we finally arrived at our rightful place on the Hopi Mesas.

During our migrations, we established ourselves throughout the land by cultivating and caring for the earth. As directed by *Ma'saw*, the setting of Hopi "footprints" included the establishment of ritual springs, sacred trails, trail markers, shrines, and petroglyphs. As the Hopi people moved on to new areas, we left behind ruins, potsherds, and other physical evidence that we had vested the area with our spiritual stewardship and the fulfillment of our pact with *Ma'saw*. From a Hopi perspective, these archaeological sites provide physical evidence verifying Hopi clan histories and religious beliefs.

We, as Hopis, believe these archaeological sites were not abandoned by our prehistoric ancestors, but rather are places with which the Hopi people retain a strong emotional and ancestral affiliation. The Hopi people believe that our ancestors who were laid to rest at these archaeological sites were intended to - and continue to - maintain a spiritual guardianship over those places. Many of the archaeological sites continue to be referred to specifically during the recounting of particular clan histories by clan elders within our ceremonial rooms known as kivas.

Mr. Chairman it is because of the deep cultural, religious, historical and emotional relationship that the Hopi people have with archaeological sites within the southwestern United States that I, representing the Hopi Tribe, address the three issues that this subcommittee is examining.

The Hopi Tribe strongly supports passage of H.R. 3031, to reauthorize funding for the Advisory Council for Historic Preservation. The council plays an essential role by promulgating regulations for Section 106 of the National Historic Preservation Act and in overseeing the implementation of this section. Section 106 is a key part of the Historic

Preservation Act and one that has kept federally funded, permitted, or assisted projects relatively free of litigation over their effects on historic properties.

The council also ensures that the Hopi Tribe, as an interested party, is consulted and brought into the decision-making process early in the project planning stage, so that the interests and concerns of the Hopi people regarding properties of historic and ancestral significance are taken into account when the agency is formulating its plan. The council's recent support of the Hopi Tribe's position regarding the historic preservation process for a project on Forest Service lands in Arizona, is presently very important in our desire to ensure that our ancestral cultural resources are provided a good faith and adequate effort for their identification and evaluation under the Section 106 process. The Hopi Tribe strongly supports continuing the council's role in promulgating the regulations for Section 106 and in providing both oversight and guidance for its implementation.

The Hopi Tribe believes that the basic principles of the Section 106 process are sound. Some streamlining of the process may be needed, but not at the expense of our ancestral and cultural resources. The Hopi Tribe has a specific role to play in the Section 106 process, and a good faith effort must be made by all federal agencies to integrate our concerns. The Hopi Tribe supports any changes that strengthen the Hopi Tribe's ability to be more fully integrated and provides us with a meaningful voice in the Section 106 process. The ancestral cultural resources of the Hopi people are integral to our traditions, religion, and culture.

The Hopi Tribe does not support H.R. 563 which will prohibit the inclusion of certain historic sites on the National Register of Historic Places. The Hopi Tribe objects to the

language on page 2, lines 2 through 9, which excludes "**any unimproved or unmodified natural landscape feature which does not contain artifacts or other physical evidence of human activity that have unique significance in history or prehistory.**" While these types of landscapes may be of no importance to non-Indians, for the Hopi people natural landforms and landscapes comprise a significant part of our religion and identity as a people, and are just as significant as areas that exhibit evidence of human activity. Hopi religious practice differs from modern Christianity and other western religions, which typically are not dependent on place. The successful practice of Christianity and the practitioner's resultant sense of spiritual contentment can be achieved irrespective of location. The Hopi, on the other hand, must complete certain rituals at specific shrines and other natural landforms. The protection of these sacred places and access to them are very important to the Hopi people.

Unfortunately, one of the few effective mechanisms for protecting sacred places of importance to the Hopi people is 1992 amendments to the National Historic Preservation Act, which currently treats these sites as historic properties. The proposed legislation does not provide adequate justification for the elimination or exclusion of such features from the National Register of Historic Places. Moreover, the Hopi Tribe is concerned that this proposed legislation will seriously erode the gains made recently to preserve the traditional and sacred areas important to the Native peoples of the United States and that it will unjustifiably eliminate the National Historic Preservation requirements for development of these areas important for all Americans. Mr. Chairman, the Hopi Tribe urges the you and the other members of this subcommittee to oppose H.R. 563 unless our concerns are specifically and adequately addressed.

Finally, Mr. Chairman, the Hopi Tribe hopes that you and the committee find these observations and recommendations useful. Please do not hesitate to call me if I can be of further assistance.

SUBCOMMITTEE ON NATIONAL PARKS, FORESTS, AND LANDS

COMMITTEE ON RESOURCES

U.S. HOUSE OF REPRESENTATIVES

April 2, 1996

HEARING ON H.R. 563, H.R. 3031
AMENDMENTS TO THE NATIONAL HISTORIC PRESERVATION ACT

TESTIMONY OF THE NAVAJO NATION

SUBMITTED BY
ALAN DOWNER, Ph.D
DIRECTOR
NAVAJO NATION
HISTORIC PRESERVATION DEPARTMENT
WINDOW ROCK, ARIZONA

TESTIMONY OF THE NAVAJO NATION
ON H.R. 563, H.R. 3031, AND ASPECTS OF THE IMPLEMENTATION OF THE
NATIONAL HISTORIC PRESERVATION ACT
BEFORE THE SUBCOMMITTEE ON NATIONAL PARKS, FORESTS, AND LANDS
COMMITTEE ON RESOURCES
U.S. HOUSE OF REPRESENTATIVES

INTRODUCTION

The Navajo Nation is located in the four corners region of the southwestern U.S., partially within what are today the states of Arizona, New Mexico, and Utah. The Navajo Reservation comprises some 16,500,000 acres, making it the largest Indian reservation in the U.S. There are just over 200,000 members of the Navajo Nation, the overwhelming majority of whom live and work within external boundaries of the Navajo Nation.

The Navajo Nation and its people have a strong sense of tradition. We have preserved our language, culture and heritage through the centuries after contact with European cultures. This culture has endured through the last 150 years of inclusion in U.S., in spite national assimilation policies which spawned intensive efforts to stamp out traditional Navajo culture and the traditional Navajo way of life.

In the late 1970s, the Bureau of Indian Affairs (BIA) began efforts to comply with the National Historic Preservation Act (Act). By the mid-80s, the BIA's efforts in this regard had become quite extensive. As a result, virtually every tribal official, every, agency, company or organization sponsoring projects in the Navajo Nation, and many individual Navajos were familiar with the §106 compliance aspects of the Act.

In 1986, the Navajo Nation created a formal historic preservation program, which became the Navajo Nation Historic Preservation Department (HPD) in 1988. In so doing the Navajo Nation became the first Indian nation to establish a formal program devoted to historic preservation. Today, HPD has grown to be the largest public historic preservation agency in the U.S., active in virtually all aspects of the national historic preservation program established by the Act.

H.R. 563

The Navajo Nation strenuously opposes H.R. 563. It is a naked attempt to eliminate the minimal protection offered by the Act to the kinds of historic resources that are often of greatest significance to Native Americans. Section 1 of H.R. 563 would prohibit the listing of places in the National Register of Historic Places that do not show obvious material cultural evidence of human

use. Indeed, it would prohibit inclusion of places even with material cultural evidence unless it was demonstrably of "unique significance in history or pre-history...."

Thus, Section 1 effectively eliminates any protection offered by the Act to "traditional cultural places" which show no overt material cultural evidence of human use. Traditional cultural places include a wide variety of places of deep and abiding significance to Native Americans. These include places where tribal oral traditions and oral history indicate important cultural and historic events occurred; for example, events in the origin of the tribe, places of key interactions with other tribes, as well as with Europeans, places where clans originated or became a part of the tribe. They include places where important cultural activities are conducted, such as, various ceremonial activities, collecting medicine, collecting other culturally important resources, and making offerings. Many of these activities are essential to preserving and continuing tribal culture, and for some tribes certain specific ceremonial practices are essential to the continuing existence of the world itself.

The 1992 amendments to the Act specifically authorize inclusion of such places in the National Register. The Navajo Nation believes that their inclusion is necessary and appropriate. Furthermore, we believe that the national historic preservation program is strengthened by recognition of the preservation concerns of the First Americans, which is precisely what acknowledging the National Register eligibility of "traditional cultural places" does, and it is precisely what H.R. 563 aims to undo.

It is also worth noting that the language in Section 1 of H.R. 653 would eliminate the overwhelming majority of archaeological sites from National Register eligibility. Very few archaeological sites of any time period or representing any culture can meet any rational test of uniqueness. This provision would therefore also eliminate protection for the vast majority of archaeological sites, which are for the most part, the material remains of Native American cultures. Unique sources of information about the Native American past, as well as unique sources of inspiration to contemporary Native Americans.

Section 2 of H.R. 563 specifically prohibits inclusion of Mt. Shasta in the National Register of Historic Places or, if Mt. Shasta has been designated prior to enactment of H.R. 563, voids the designation. The Navajo Nation believes that Congress should not be legislating which individual sites or places should or

should not be included in the National Register. Such an approach constitutes the narrowest sort of mircomanagement of the business of the Department of the Interior and sets a horrendous precedent.

As a final comment on the provisions of H.R. 563, the Navajo Nation would like to remind the subcommittee that the provisions of the Act that H.R. 563 seeks to repeal were enacted in December of 1992. It seems highly unlikely that two years provides sufficient experience with the implementation of these provisions to determine whether or not there is a problem that needs to be addressed. Congress should not act precipitously on this matter simply to satisfy the interests of a ski resort developer who may be inconvenienced by these provisions.

H.R.3031

H.R. 3031 reauthorizes funding for the Advisory Council on Historic Preservation through 2002. The Navajo Nation strongly endorses enactment of H.R. 3031. The Advisory Council on Historic Preservation serves a vital function in the national historic preservation program. The Advisory Council is most visible in the role it plays in the §106 process. The §106 process "protects" historic properties by forcing federal agencies to explicitly consider the affects their undertakings may have on historic properties. Neither §106 nor any other provisions of the Act provide absolute protection to a historic property. Section 106 merely requires federal agencies to consider historic properties in their planning and approval processes.

The Advisory Council plays a vital function in the §106 process. If the Advisory Council ceases to exist the §106 process would become chaotic at best. The Advisory Council also plays an essential role in working with federal agencies to help them meet the other historic preservation mandates in the Act and to advise them on how to better deal with their overall historic preservation responsibilities.

OBSERVATIONS ON IMPLEMENTATION OF VARIOUS ASPECTS OF THE ACT

THE §106 PROCESS

Section 106 of the Act provides protection to historic properties by requiring federal agencies to take into account the affects of their undertakings on historic properties. It is essential to recall that nothing in the Act generally, §106 specifically, or

its implementing regulations, 36 CFR Part 800, prohibit a federal agency from approving or implementing an undertaking, even if it will destroy nationally significant historic properties. The protection afforded by the §106 is purely procedural. As long as an agency complies with the procedural requirements detailed in 36 CFR Part 800, it may make any decision it regards as being in the public interest, notwithstanding any effects to historic properties. Because the process for complying with §106 is set forth in federal regulations, the process is often referred to and discussed as if it were truly regulatory. The process is set forth in regulations, but the outcome of the process is purely advisory in nature. Having obtained this advice through the process detailed in 36 CFR Part 800, the federal agency makes the final decision on whether or not to proceed with an undertaking and how to deal with any historic properties that may be affected by it.

The process set out in 36 CFR Part 800 can, under certain circumstances, be quite lengthy. More often it is quite brief. Only a very small minority of projects, probably far less than 1%, ever get into full blown consultations necessary to complete the process. Fewer than a dozen projects per year are so complicated, controversial and involve preservation issues that can not be resolved among the agency and the various interested parties and must, therefore, go before the membership of the Advisory Council to complete the process.

The process established in 36 CFR Part 800 requires that federal agencies consult with state historic preservation officers, and under certain circumstances with the Advisory Council. The regulations also require that the agency identify potentially interested parties, and offer them the opportunity to participate in the process. When Indian lands may be affected, the involved tribal government(s) must be offered the opportunity to participate.

The Advisory Council's rationale for seeking to involve all of these parties is that identifying and consulting to resolve all of the issues up front, is more likely to lead to an outcome that properly balances the public interest in preserving our Nation's patrimony, with the public interests in the undertaking. Problems invariably arise and are difficult, and sometimes impossible to resolve, when issues are identified late in the process, when the range of possible options has already been narrowed down. The later in the process issues surface, the harder it is to reach a balanced resolution.

Furthermore, it is worth recalling that the Act was originally passed in 1966 to provide local communities input into the federal planning process. It was a direct response to federal planning and project implementation protocols of the 1950s and early 1960s, when federal agencies made decisions about where to site roads and other projects, which parts of cities would be "renewed" and so on, without any consideration of local concerns or local views or acceptance of the impacts. The result of this approach was often large scale destruction of buildings which were critical to the fabric of America's cities and towns.

The Act was passed, and the process for implementing §106 was crafted with the understanding that it was specifically to provide input from the people most affected by an undertaking. So that their concerns would receive a balanced hearing in the agency's planning and approval process. While the focus of the §106 process is historic properties, it is essential to recall that this entire process grew out of efforts to ensure that communities had some say in what federal undertakings occurred in and around them.

The §106 process, when it involves large scale, complicated, and controversial undertakings can be protracted and difficult to complete. But these kinds of undertakings represent only a minute fraction of the activities subject to some form of formal §106 compliance requirements. There is no need to make wholesale changes to the system, simply to accommodate a few projects, however well-heeled their proponents may be. It is especially important that the original intent of §106 not be lost and that concerned citizens retain their rights to full participation in the process.

The Navajo Nation does believe that the Advisory Council could be more effective by focussing more on programmatic review and interaction with federal agencies, rather than devoting so many of its resources to §106 review. This appears to be a largely administrative policy decision however, it does not appear to require Congressional action. Indeed, we believe that the Advisory Council is aware of most of the "problems" with its operations. Administrative solutions exist for all of these matters, and proper exercise of Congressional oversight, not amendment of the Act, seems the proper approach to implementing solutions.

The Navajo Nation thanks the subcommittee for this opportunity to provide testimony. The Navajo Nation regards these matters as being of extreme importance and is prepared to provide further information or whatever reasonable assistance it can to the subcommittee regarding these matters.

SUBMISSIONS FOR THE RECORD

Due to the high cost of printing the materials submitted on the three bills by the following were placed in the hearing record files of the Committee:

Armstrong, Marcia H.
Baker, Marilyn F.
Ballard, Lisa
Bauer, Norm
Becker, Nancy and Leonard
Berenson, Janet
Bhakti, Sara
Bowling, Donald E.
Busch, Christet
Butler, Donald
Butler, Edith
Carey, Wendy L.
Carlson, John C.
Carpelan, Mary
Castagnola, Larry
Colt, Joseph
Crawford, Don
DeGraff, Lawanna
Downer, Alan
Drakes, Bill
Elxor, Peter
Endres, David R.
Finan, Karen
Forslund, Dero B.
Frediani, Lore
Gilman, Brad
Greensfelder, Sara
Griffin, Carol M.
Hall III, Frank P.
Hall, Jr., Roy V.
Harbour, Renate
Heape, Jennifer
Henn, Dr. Winfield
Herger, Wally
Herman, Frances
Hertfelder, Eric
Johnson, Jacqueline
Johnson, Judy J.
Johnson, Vernon T.
Keller, Sandy V.
Kerwin, Anthony E.
LaDuke, Winona
Lafond Jr., Richard J.
Lee, Antoinette J.
Lemke, Gary H.
Loetz, Sharon M.
Macklin, Kenneth
Margolin, Malcolm
McAndrew Jean B.,
McQuirk, Lawrence Edward
Mertens, Ralph
Mertens, Sushila
Miller, Allison A.
Miller, Charles M.
Mitchell, Jeff C.
Monroe, John M.
Montgomery, Lowell
Mozina, Stacey
Murdoch, Patrick
Murray, William David, Sr.
Penney, Samuel N.
Plowman, Stan V.
Randall, Erica
Rice, Dan
Rice, Ronda
Ross, Lori E.
Scofield, Patti Arcand
Seifert, Donna J. Ph.D.
Shull, Carol D.
Slotter, Susan
Stuemke, Scott E.
Sullivan, Francie
Tenny, Dave
Valvers, Tony
Vaughan, Terry Ann
White, Jerry
Zwanziger Roger

SUBMISSIONS FOR THE RECORD

The following letter on H.R. 563 is a sample of one submitted for the record by the list of names that comes after it:

Congressman James V. Hansen,
Chairman, Subcommittee on National Parks, Forests and Lands,
Committee on Resources,
812 O'Neill House Office Building
Washington, DC 20515

Dear Congressman James V. Hansen:

This letter is to express strong oppopsition to H.R. 563, introduced into the House of Representatives by Congressman Wally Herger on January 18, 1995. Please include these comments as part of the officioal record on this bill.

If passed, H.R. 563 would severely affect protection of Native American sacred sites under the National Historic Preservation Act (NHPA), currently the only legal vehicle affording any protection to such sites, and assuring proper review of undertakings on federal lands. In its own words, the proposed bill bars any site that does not contain "physical evidence of human activity." It demands that Mount Shasta's historical designation be removed.

Any sites left in their natural state, such as those used for spiritual guidance, vision quests, training of medicine people, ceremonies, and other activities which traditionally left sites the way they were made by the Creator, would not be protected under NHPA. NHPA is currently the only federal law that provides any protection for Native American cultural and historic sites.

H.R. 563 specifically targets Mount Shasta, stating that "Mt. Shasta* * * may not be designated by any agency or authority of the United States as a historic district, historic site or national monument * * *." The fact is that Mounbt Shasta was designated as a Historic District in March 1994 (Executive Order No. 11593), and that this bill intends to undo that designation. H.R. 563 sets a dangerous precedent, paving the way for future removals from the National Register.

Please support the withdrawal of H.R. 563, because it destroys the effectiveness of the protection of sacred sites under the NHPA; it discriminates against Native Americans; it particularly affects the preservation of Mount Shasta; and violates the trust relationship between Native people and the U.S. government.

Please keep me informed about your actions in this matter.

Sincerely Yours,
(Signature)

Aginar, Joseph A.
Amsh, Christopher
Angle, Arthur L.
Ashenbrucker, Joseph
Athanario, Rita
Bailey, Christopher R.
Barnes, Margaret
Bartholomay, Marsha
Bartlett, Flora M.
Bayerlein, Walter
Becket, Norman
Benguath, Tom
Berman, Joan Selix
Bess, Patti
Bjork, Dick
Black, Margaret E.
Bollock, E. Bud
Bollock, Heidi
Bollock, Steven L.
Bookout, Gregory J.
Brink, Luciene
Brisbane, Rose
Brown, Donna Lee
Burton, Rebecca A.
Campbell, Tammy
Campus, Gary A.
Castor, Marko
Chavez, Lucinda
Chief, Dave Y.
Chief, Winyan W.
Clemens, Nancy E.
Clemens, Paul M.
Coe, David
Coffman, Barbara
Compton, Oliver D.
Cope, Judith
Coziah, S.L.
Cue, William R.
Davis, Les & Jane
Deaderick, Jody
Demaray, Cheryl J.
Dickard, Shirley,
Duffy, Sandra K.
Duran, Hank
Duran, Shannon (Reed)
Durbin, Tom
Dwolaczyk, Debra
Endres, Marie
Escalante, Carra Lee
Fayll, David
FGredrikson, Kristin
Frally, Darlene
Fransen, Gary
Fravel, Diane J.
Friberg, Matty
Furlong, Amy
Gallager, Tim
Garcia-Marias, Polly
Garvina, Eliza
Gavin, Louis
Geisler, Karen
Genochio, Sandra
Gibson, Gayle
Gibson, Rose
Graveet, Pamela R.
Green, Adriadne H.
Gseulu, Donny
Harman, Bruit
Harris, Rose M.
Harrson, Cheryl A.
Hayes, Cindy Jo
Haynes, Denise L.

Hendrickson, Sarah C.V.
Hershey, Steve
Hildebrand, John T.
Hochwald, Jill
Hogan, Alicia R.
Holland, David
Honbig, Mrs. Lorraine
Huber, Linda
Jacobsen, Diane M.
Janson, DelMar
Jarvis, Roberto
Jones, Linda L.
Jordan, Marilee
Junget, Cathy
Karp, Kent
Keiser, Greg
Keller, James Boyd
Keller, Kathleen
Keogh, Bill
Khalsa, Sadasat Kaur
King, Nancy S.
Kowal, Mondy
Kremmer, Joan
Lakey, Linda
Landess, Michael
Lauria, Lauren
LeBlanc, Robert P.
Lichtenstein, Miriam
Livingston, Charles F.
Lovato, Andrew
Lucas, Joan
Maclaine, Joshe
Malthan, E. Pearl
Marland, Arlo
Marlett, Mary
Partinez, Dan
Mata, Estelle
Mathison, Walter
Matlock, Kryn
McCaffe, Sr., Shelly
McCarthy, Elizabeth K.
McCotter, Kathryn
McCurdy, Sharon
Mclaughlin, Linette
McQuirk, Sharon
Meyer, Sheila
Meyers, Pamela & Bart
Michaels, Joan
Mintin, Kavin
Minzel, David
Minzel, Judith W.
Montgomery, Lowell
Nygard, Lynn
O'Neill Sean
O'Neill, Hugh Daniel
Ogle, Marguerite
Orania-Dahl, Laura
Pearl, Havier
Petrich, Chamai
Phillips, David R.
Phillips, Judith A.
Phillips, Robin
Piere, Genna
Pinkson, Thomas
Polom, Ann
Pope, Lee
Pratt, Margaret L.
Ramsey, Karen
Ramsey, Ron
Ross, Lori E.
Rountree, Marilyn L.
Rountree, Paul W.

Rousseau, Emelia H.
Rowland, Maureen
Russell, Lance
Salang, Paul
Samuel, David
Schley-May, Renee
Schroeder-Smith, Doris
Scott, Simone
Searles, Dave
Shanelee, Susan
Shavartz, Jason
Sheppard, Earl "Sundance"
Sherick, Christine
Shipley, Robert P.
Shonbron, Will
Shumaker, Kristin L.
Silverwolf, Elizabeth
Simmons, Jane
Simon, John
Slattery, Eric
Smith, Christine M.
Smith, Judy M.
Smualey, Zifford
Snyder, Jaime L.
Soria, Lynn
Stein, Cary
Stewart, Sherril D.
Stewart, Theresa
Stiles, H.
Stocking, Laurel
Subersky, Jeffrey M.
Thomas, Robert S.
Thompson, Donald S.
Thompson, Heather Powell
Toles, Nadine
Trangot, Esther
Trask, Marie
Travers, Wilma J.
Turple, Ruby
Walter, Bradley M.
Waters, Arye
Wathen, Melanie
Wedgbury, Kelli
Weisberger, Ruth
White, Peggy A.
Wolfin, Arvada
Wread, Lupine
Young, Jesse
Zane, Kathy
Zina, Helen L.

○

24–568 (232)

ISBN 0-16-053413-5

