



Preserving America's Heritage

TESTIMONY FOR THE RECORD

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

**TO THE SUBCOMMITTEE ON NATIONAL PARKS,
THE HONORABLE CRAIG THOMAS, CHAIRMAN**

**OVERSIGHT HEARING ON REAUTHORIZATION OF THE
ADVISORY COUNCIL ON HISTORIC PRESERVATION
AND
THE NATIONAL HISTORIC PRESERVATION ACT
SEPTEMBER 22, 2005**

SUMMARY STATEMENT

An independent Federal agency, the Advisory Council on Historic Preservation (ACHP) promotes historic preservation nationally by providing a forum for influencing Federal activities, programs, and policies that impact historic properties. In furtherance of this objective, S. 1378 provides reauthorization of its appropriations in accordance with the provisions of the National Historic Preservation Act of 1966, as amended (16 U.S.C. 470 et seq.) (NHPA). The bill also offers amendments to the ACHP's authorities that we believe will strengthen our ability to meet our responsibilities under NHPA, and to provide leadership and coordination in the Federal historic preservation program.

BACKGROUND

Title II of the NHPA established the ACHP. NHPA charges the ACHP with advising the President and the Congress on historic preservation matters and entrusts the ACHP with the unique mission of advancing historic preservation within the Federal Government and the national historic preservation program. In FY 2002, the ACHP adopted the following mission statement:

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

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

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

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

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

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

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

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

New Directions. Since assuming the chairmanship in November 2001, I have taken steps to ensure that the ACHP fulfills the leadership role envisioned for it in NHPA. In doing so, we have focused the ACHP on pursuing the broader policy goals of the national historic preservation program.

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

NHPA established a national policy to "foster conditions under which our modern society and our prehistoric and historic resources can exist in productive harmony and fulfill the social, economic and other requirements of present and future generations." Among other things, the statute directed Federal agencies to foster conditions that help attain the national goal of historic preservation; to act as faithful stewards of federally owned, administered, or controlled historic resources for present and future generations; and to offer maximum encouragement and assistance to other public and private preservation efforts through a variety of means.

To promote this policy and to exercise its intended leadership, the ACHP has taken the following steps, working through its membership and with its partner Federal agencies:

- Developed an Executive order to promote the benefits of preservation, to improve Federal stewardship of historic properties, and to foster recognition of such properties as national assets to be used for economic, educational, and other purposes. President Bush issued this as Executive Order 13287, "Preserve America," on March 3, 2003.
- Created an initiative for the White House to stimulate creative partnerships among all levels of government and the private sector to preserve and actively use historic resources for a better appreciation of America's history and diversity. The initiative is known as *Preserve America* and was announced by First Lady Laura Bush on March 3, 2003.
- Undertook a major new initiative to improve the participation of Native Americans in the national historic preservation program by establishing a Native American Advisory Group.

The ACHP's 20 statutorily designated members address policy issues, direct program initiatives, and make recommendations regarding historic preservation to the President, Congress, and heads of other Federal agencies. The Council members meet four times per year to conduct business, holding two meetings in Washington, D.C., and two in other communities where relevant preservation issues can be explored. However, myself and other Council members are actively involved in Council business on a continual basis, particularly since January 2004 when the Administration's *Preserve America* initiative began to rapidly gain momentum.

The ACHP has a leading role in both the *Preserve America* Steering Committee and the staff efforts to carry out specific *Preserve America* activities. In coordination with the White House, the *Preserve America* Steering Committee sets policy and oversees the initiative. At the operational level, ACHP staff works with partner Federal agencies to implement the *Preserve America* Communities and *Preserve America* Presidential Awards programs. For FY 2006, we will work closely with the National Park Service to operate the new *Preserve America* grants program.

The ACHP also works with Federal agencies, including their senior policy level officials designated in response to the *Preserve America* Executive order. In February 2006, we will submit a report to the President assessing the efforts of Federal agencies to manage their historic properties in a manner that promotes historic preservation.

Our Native American Advisory Group works with the membership and our staff-level Native American Program to improve relations and coordination of efforts with the tribes and Tribal Historic Preservation Officers in regard to issues of historic preservation. These issues are of particular and unique importance to tribes from both economic and cultural perspectives.

The staff carries out the day-to-day work of the ACHP and provides all support services for Council members programs. To reflect and support the work of the committees, the Executive Director reorganized the ACHP staff into three program offices to mirror the committee structure. Staff components are under the supervision of the Executive Director and are located at the ACHP's headquarters in Washington, D.C.

PROPOSED AMENDMENTS TO THE NATIONAL HISTORIC PRESERVATION ACT

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

The ACHP seeks to amend its appropriation authorization for two reasons. First, the authorization extends only through FY 2005 and must be renewed for FY 2006 and beyond. Second, the ACHP is seeking certain changes in its membership and operational authorities to better equip it to meet its current mission. At its February and May 2003 meetings, the ACHP endorsed an approach to the reauthorization issue that addresses the immediate appropriations authority issue and also contains the desired amendments to the ACHP's composition and authorities. S.2469, "A bill to amend the National Historic Preservation Act to provide appropriation authorization and improve the operations of the Advisory Council on Historic Preservation," was introduced by the Honorable James M. Talent May 20, 2004. A hearing was held before this subcommittee June 8, 2004. A companion bill, H.R. 3223, was introduced and referred to the House Resources Committee.

The legislation was not enacted in the 108th Congress and, on July 11, 2005, Senator Talent and Senator Wyden introduced S. 1378. This bill is virtually identical to S. 2469, with the inclusion of a provision to extend the authorization for the Historic Preservation Fund. A companion bill has been introduced in the House of Representatives as H.R. 3446.

The changes sought by the ACHP and contained in S. 1378 are explained in this overview.

Appropriations Authorization. This provision (Section 1(g)) would amend the current time-limited authorization and replace it with a permanent appropriations authorization. When the ACHP was created in 1966, its functions were exclusively advisory and limited, and the agency was lodged administratively in the Department of the Interior. Since then, the Congress has amended the NHPA to establish the ACHP as an independent Federal agency and provide it with a range of program authorities crucial to the success of the national historic preservation program.

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

Expansion of Membership. This provision (Section 1(d)) would expand the membership of the ACHP by directing the President to designate the heads of three additional Federal agencies as members of the ACHP. The ACHP has been aggressively pursuing partnerships with Federal agencies in recent years and has found the results to be greatly beneficial to meeting both Federal agency historic preservation responsibilities and the ACHP's own mission goals. Experience has shown that these partnerships are fostered and enhanced by having the agency participate as a full-fledged member of the ACHP, giving it both a voice and a stake in the ACHP's actions. The amendment would bring the total number of Federal ACHP members to nine and expand the ACHP membership to 23, an administratively manageable number that preserves the current majority of non-Federal members. A technical amendment to adjust quorum requirements would also be included.

Authority and Direction to Improve Coordination with Federal Funding Agencies. This provision (Section 1(h)) would give the ACHP the authority and direction to work with Federal funding agencies to assist them in determining appropriate uses of their existing grants programs for advancing the purposes of NHPA.

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

Technical Amendments. These provisions would provide four technical changes that would improve ACHP operations:

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

Extension of Authorization for the Historic Preservation Fund. This provision (Section 1(c)) would extend the existing authorization for \$150 million annually from the proceeds of oil and gas leases on the

Outer Continental Shelf to be made available for the Historic Preservation Fund. We believe this concept of using part of the proceeds from the depletion of the Nation's non-renewable resources to preserve and enhance another non-renewable resource, our cultural heritage, is sound and merits continuation. The fund supports the valuable activities of the various State Historic Preservation Officers and Tribal Historic Preservation Officers, our principal partners in carrying out the NHPA's authorities. In addition, the fund makes possible the President's *Preserve America* grants program, which has been funded by the Congress for FY 2006. Extending this authority through FY 2011 is essential and is welcomed by the ACHP.

CONCLUSION

The ACHP has reached a level of maturity as an independent Federal agency and as a key partner in the national historic preservation program to warrant continued support from the Congress. As demonstrated by its recent program accomplishments including the President's Executive Order 13287, the *Preserve America* initiative, and the Native American Program, the ACHP is a vital component of the Federal historic preservation program. We believe that the legislation we seek, coupled with periodic oversight by this Subcommittee and the annual review provided by the Appropriations Committees, is fully justified by our record of accomplishment. We hope that the Subcommittee will favorably consider this request, including our recommended technical amendments and the important extension of the Historic Preservation Fund authorization.

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