

out the provisions of sections 470 to 470b, and 470c to 470n of this title.

REVIEW OF OPERATION OF HISTORIC PRESERVATION FUND AND NATIONAL HISTORIC PRESERVATION PROGRAM; REPORT TO PRESIDENT AND CONGRESS

Pub. L. 96-515, title V, §504, Dec. 12, 1980, 94 Stat. 3005, provided that: "The Secretary shall submit a report directly to the President and the Congress on or before June 1, 1986, reviewing the operation of the Historic Preservation Fund and the national historic preservation program since the enactment of this Act [Dec. 12, 1980] and recommending appropriate funding levels, the time period for the reauthorization for appropriations from the fund, and other appropriate legislative action to be undertaken upon the expiration of the current fund authorization."

§ 470h-1. Acceptance of privately donated funds by Secretary

(a) Authorization; use of funds

In furtherance of the purposes of this subchapter, the Secretary may accept the donation of funds which may be expended by him for projects to acquire, restore, preserve, or recover data from any district, building, structure, site, or object which is listed on the National Register of Historic Places established pursuant to section 470a of this title, so long as the project is owned by a State, any unit of local government, or any nonprofit entity.

(b) Consideration of factors respecting expenditure of funds

In expending said funds, the Secretary shall give due consideration to the following factors: the national significance of the project; its historical value to the community; the imminence of its destruction or loss; and the expressed intentions of the donor. Funds expended under this subsection shall be made available without regard to the matching requirements established by section 470b of this title but the recipient of such funds shall be permitted to utilize them to match any grants from the Historic Preservation Fund established by section 470h of this title.

(c) Transfer of unobligated funds

The Secretary is hereby authorized to transfer unobligated funds previously donated to the Secretary for the purposes of the National Park Service, with the consent of the donor, and any funds so transferred shall be used or expended in accordance with the provisions of this subchapter.

(Pub. L. 89-665, title I, §109, as added Pub. L. 96-244, §1, May 19, 1980, 94 Stat. 346.)

§ 470h-2. Historic properties owned or controlled by Federal agencies

(a) Responsibilities of Federal agencies; program for identification, evaluation, nomination, and protection

(1) The heads of all Federal agencies shall assume responsibility for the preservation of historic properties which are owned or controlled by such agency. Prior to acquiring, constructing, or leasing buildings for purposes of carrying out agency responsibilities, each Federal agency shall use, to the maximum extent feasible, historic properties available to the agency, in ac-

cordance with Executive Order No. 13006, issued May 21, 1996 (61 Fed. Reg. 26071). Each agency shall undertake, consistent with the preservation of such properties and the mission of the agency and the professional standards established pursuant to section 470a(g)¹ of this title, any preservation, as may be necessary to carry out this section.

(2) Each Federal agency shall establish (unless exempted pursuant to section 470v of this title), in consultation with the Secretary, a preservation program for the identification, evaluation, and nomination to the National Register of Historic Places, and protection of historic properties. Such program shall ensure—

(A) that historic properties under the jurisdiction or control of the agency, are identified, evaluated, and nominated to the National Register;

(B) that such properties under the jurisdiction or control of the agency as are listed in or may be eligible for the National Register are managed and maintained in a way that considers the preservation of their historic, archaeological, architectural, and cultural values in compliance with section 470f of this title and gives special consideration to the preservation of such values in the case of properties designated as having National significance;

(C) that the preservation of properties not under the jurisdiction or control of the agency, but subject to be potentially affected by agency actions are given full consideration in planning;

(D) that the agency's preservation-related activities are carried out in consultation with other Federal, State, and local agencies, Indian tribes, Native Hawaiian organizations carrying out historic preservation planning activities, and with the private sector; and

(E) that the agency's procedures for compliance with section 470f of this title—

(i) are consistent with regulations issued by the Council pursuant to section 470s of this title;

(ii) provide a process for the identification and evaluation of historic properties for listing in the National Register and the development and implementation of agreements, in consultation with State Historic Preservation Officers, local governments, Indian tribes, Native Hawaiian organizations, and the interested public, as appropriate, regarding the means by which adverse effects on such properties will be considered; and

(iii) provide for the disposition of Native American cultural items from Federal or tribal land in a manner consistent with section 3002(c) of title 25.

(b) Records on historic properties to be altered or demolished; deposit in Library of Congress or other appropriate agency

Each Federal agency shall initiate measures to assure that where, as a result of Federal action or assistance carried out by such agency, an historic property is to be substantially altered or demolished, timely steps are taken to make or have made appropriate records, and that such

¹ So in original. Probably should be 470a(h).

records then be deposited, in accordance with section 470a(a) of this title, in the Library of Congress or with such other appropriate agency as may be designated by the Secretary, for future use and reference.

(c) Agency Preservation Officer; responsibilities; qualifications

The head of each Federal agency shall, unless exempted under section 470v of this title, designate a qualified official to be known as the agency's "preservation officer" who shall be responsible for coordinating that agency's activities under this subchapter. Each Preservation Officer may, in order to be considered qualified, satisfactorily complete an appropriate training program established by the Secretary under section 470a(h)² of this title.

(d) Agency programs and projects

Consistent with the agency's missions and mandates, all Federal agencies shall carry out agency programs and projects (including those under which any Federal assistance is provided or any Federal license, permit, or other approval is required) in accordance with the purposes of this subchapter and, give consideration to programs and projects which will further the purposes of this subchapter.

(e) Review of plans of transferees of surplus federally owned historic properties

The Secretary shall review and approve the plans of transferees of surplus federally owned historic properties not later than ninety days after his receipt of such plans to ensure that the prehistorical, historical, architectural, or culturally significant values will be preserved or enhanced.

(f) Planning and actions to minimize harm to National Historic Landmarks

Prior to the approval of any Federal undertaking which may directly and adversely affect any National Historic Landmark, the head of the responsible Federal agency shall, to the maximum extent possible, undertake such planning and actions as may be necessary to minimize harm to such landmark, and shall afford the Advisory Council on Historic Preservation a reasonable opportunity to comment on the undertaking.

(g) Costs of preservation as eligible project costs

Each Federal agency may include the costs of preservation activities of such agency under this subchapter as eligible project costs in all undertakings of such agency or assisted by such agency. The eligible project costs may also include amounts paid by a Federal agency to any State to be used in carrying out such preservation responsibilities of the Federal agency under this subchapter, and reasonable costs may be charged to Federal licensees and permittees as a condition to the issuance of such license or permit.

(h) Annual preservation awards program

The Secretary shall establish an annual preservation awards program under which he may make monetary awards in amounts of not to ex-

ceed \$1,000 and provide citations for special achievement to officers and employees of Federal, State, and certified local governments in recognition of their outstanding contributions to the preservation of historic resources. Such program may include the issuance of annual awards by the President of the United States to any citizen of the United States recommended for such award by the Secretary.

(i) Environmental impact statement

Nothing in this subchapter shall be construed to require the preparation of an environmental impact statement where such a statement would not otherwise be required under the National Environmental Policy Act of 1969 [42 U.S.C. 4321 et seq.], and nothing in this subchapter shall be construed to provide any exemption from any requirement respecting the preparation of such a statement under such Act.

(j) Waiver of provisions in event of natural disaster or imminent threat to national security

The Secretary shall promulgate regulations under which the requirements of this section may be waived in whole or in part in the event of a major natural disaster or an imminent threat to the national security.

(k) Assistance for adversely affected historic property

Each Federal agency shall ensure that the agency will not grant a loan, loan guarantee, permit, license, or other assistance to an applicant who, with intent to avoid the requirements of section 470f of this title, has intentionally significantly adversely affected a historic property to which the grant would relate, or having legal power to prevent it, allowed such significant adverse effect to occur, unless the agency, after consultation with the Council, determines that circumstances justify granting such assistance despite the adverse effect created or permitted by the applicant.

(l) Documentation of decisions respecting undertakings

With respect to any undertaking subject to section 470f of this title which adversely affects any property included in or eligible for inclusion in the National Register, and for which a Federal agency has not entered into an agreement pursuant to regulations issued by the Council, the head of such agency shall document any decision made pursuant to section 470f of this title. The head of such agency may not delegate his or her responsibilities pursuant to such section. Where a section 106 [16 U.S.C. 470f] memorandum of agreement has been executed with respect to an undertaking, such memorandum shall govern the undertaking and all of its parts.

(Pub. L. 89-665, title I, §110, as added Pub. L. 96-515, title II, §206, Dec. 12, 1980, 94 Stat. 2996; amended Pub. L. 102-575, title XL, §§4006(b), 4012, Oct. 30, 1992, 106 Stat. 4757, 4760; Pub. L. 106-208, §§4, 5(a)(8), May 26, 2000, 114 Stat. 318, 319; Pub. L. 108-352, §13, Oct. 21, 2004, 118 Stat. 1397.)

REFERENCES IN TEXT

Executive Order No. 13006, referred to in subsec. (a)(1), is set out as a note under section 3306 of Title 40, Public Buildings, Property, and Works.

² So in original. Probably should be 470a(i).

The National Environmental Policy Act of 1969, referred to in subsec. (i), is Pub. L. 91-190, Jan. 1, 1970, 83 Stat. 852, as amended, which is classified generally to chapter 55 (§ 4321 et seq.) of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 4321 of Title 42 and Tables.

AMENDMENTS

2004—Subsec. (l). Pub. L. 108-352 amended directory language of Pub. L. 106-208, § 5(a)(8). See 2000 Amendment note below.

2000—Subsec. (a)(1). Pub. L. 106-208, § 4, substituted “agency, in accordance with Executive Order No. 13006, issued May 21, 1996 (61 Fed. Reg. 26071),” for “agency,” in second sentence.

Subsec. (l). Pub. L. 106-208, § 5(a)(8), as amended by Pub. L. 108-352, substituted “pursuant to regulations issued by the Council” for “with the Council”.

1992—Subsec. (a)(1). Pub. L. 102-575, § 4012(1), substituted “section 470a(g)” for “section 470a(f)”.

Subsec. (a)(2). Pub. L. 102-575, § 4012(2), amended par. (2) generally. Prior to amendment, par. (2) read as follows: “With the advice of the Secretary and in cooperation with the State historic preservation officer for the State involved, each Federal agency shall establish a program to locate, inventory, and nominate to the Secretary all properties under the agency’s ownership or control by the agency, that appear to qualify for inclusion on the National Register in accordance with the regulations promulgated under section 470a(a)(2)(A) of this title. Each Federal agency shall exercise caution to assure that any such property that might qualify for inclusion is not inadvertently transferred, sold, demolished, substantially altered, or allowed to deteriorate significantly.”

Subsec. (c). Pub. L. 102-575, § 4006(b), substituted “section 470a(h)” for “section 470a(g)”.

Subsecs. (k), (l). Pub. L. 102-575, § 4012(3), added subsecs. (k) and (l).

EX. ORD. NO. 13287. PRESERVE AMERICA

Ex. Ord. No. 13287, Mar. 3, 2003, 68 F.R. 10635, provided: By the authority vested in me as President by the Constitution and the laws of the United States of America, including the National Historic Preservation Act (16 U.S.C. 470 et seq.) (NHPA) and the National Environmental Policy Act [of 1969] (42 U.S.C. 4321 et seq.), it is hereby ordered:

SECTION 1. *Statement of Policy.* It is the policy of the Federal Government to provide leadership in preserving America’s heritage by actively advancing the protection, enhancement, and contemporary use of the historic properties owned by the Federal Government, and by promoting intergovernmental cooperation and partnerships for the preservation and use of historic properties. The Federal Government shall recognize and manage the historic properties in its ownership as assets that can support department and agency missions while contributing to the vitality and economic well-being of the Nation’s communities and fostering a broader appreciation for the development of the United States and its underlying values. Where consistent with executive branch department and agency missions, governing law, applicable preservation standards, and where appropriate, executive branch departments and agencies (“agency” or “agencies”) shall advance this policy through the protection and continued use of the historic properties owned by the Federal Government, and by pursuing partnerships with State and local governments, Indian tribes, and the private sector to promote the preservation of the unique cultural heritage of communities and of the Nation and to realize the economic benefit that these properties can provide. Agencies shall maximize efforts to integrate the policies, procedures, and practices of the NHPA and this order into their program activities in order to efficiently and effectively advance historic preservation objectives in the pursuit of their missions.

SEC. 2. *Building Preservation Partnerships.* When carrying out its mission activities, each agency, where consistent with its mission and governing authorities, and where appropriate, shall seek partnerships with State and local governments, Indian tribes, and the private sector to promote local economic development and vitality through the use of historic properties in a manner that contributes to the long-term preservation and productive use of those properties. Each agency shall examine its policies, procedures, and capabilities to ensure that its actions encourage, support, and foster public-private initiatives and investment in the use, reuse, and rehabilitation of historic properties, to the extent such support is not inconsistent with other provisions of law, the Secretary of the Interior’s Standards for Archeology and Historic Preservation, and essential national department and agency mission requirements.

SEC. 3. *Improving Federal Agency Planning and Accountability.* (a) Accurate information on the state of Federally owned historic properties is essential to achieving the goals of this order and to promoting community economic development through local partnerships. Each agency with real property management responsibilities shall prepare an assessment of the current status of its inventory of historic properties required by section 110(a)(2) of the NHPA (16 U.S.C. 470h-2(a)(2)), the general condition and management needs of such properties, and the steps underway or planned to meet those management needs. The assessment shall also include an evaluation of the suitability of the agency’s types of historic properties to contribute to community economic development initiatives, including heritage tourism, taking into account agency mission needs, public access considerations, and the long-term preservation of the historic properties. No later than September 30, 2004, each covered agency shall complete a report of the assessment and make it available to the Chairman of the Advisory Council on Historic Preservation (Council) and the Secretary of the Interior (Secretary).

(b) No later than September 30, 2004, each agency with real property management responsibilities shall review its regulations, management policies, and operating procedures for compliance with sections 110 and 111 of the NHPA (16 U.S.C. 470h-2 & 470-3) and make the results of its review available to the Council and the Secretary. If the agency determines that its regulations, management policies, and operating procedures are not in compliance with those authorities, the agency shall make amendments or revisions to bring them into compliance.

(c) Each agency with real property management responsibilities shall, by September 30, 2005, and every third year thereafter, prepare a report on its progress in identifying, protecting, and using historic properties in its ownership and make the report available to the Council and the Secretary. The Council shall incorporate this data into a report on the state of the Federal Government’s historic properties and their contribution to local economic development and submit this report to the President by February 15, 2006, and every third year thereafter.

(d) Agencies may use existing information gathering and reporting systems to fulfill the assessment and reporting requirements of subsections 3(a)-(c) of this order. To assist agencies, the Council, in consultation with the Secretary, shall, by September 30, 2003, prepare advisory guidelines for agencies to use at their discretion.

(e) No later than June 30, 2003, the head of each agency shall designate a senior policy level official to have policy oversight responsibility for the agency’s historic preservation program and notify the Council and the Secretary of the designation. This senior official shall be an assistant secretary, deputy assistant secretary, or the equivalent, as appropriate to the agency organization. This official, or a subordinate employee reporting directly to the official, shall serve as the agency’s Federal Preservation Officer in accordance with section 110(c) of the NHPA. The senior official shall ensure that

the Federal Preservation Officer is qualified consistent with guidelines established by the Secretary for that position and has access to adequate expertise and support to carry out the duties of the position.

SEC. 4. *Improving Federal Stewardship of Historic Properties.* (a) Each agency shall ensure that the management of historic properties in its ownership is conducted in a manner that promotes the long-term preservation and use of those properties as Federal assets and, where consistent with agency missions, governing law, and the nature of the properties, contributes to the local community and its economy.

(b) Where consistent with agency missions and the Secretary of the Interior's Standards for Archeology and Historic Preservation, and where appropriate, agencies shall cooperate with communities to increase opportunities for public benefit from, and access to, Federally owned historic properties.

(c) The Council is directed to use its existing authority to encourage and accept donations of money, equipment, and other resources from public and private parties to assist other agencies in the preservation of historic properties in Federal ownership to fulfill the goals of the NHPA and this order.

(d) The National Park Service, working with the Council and in consultation with other agencies, shall make available existing materials and information for education, training, and awareness of historic property stewardship to ensure that all Federal personnel have access to information and can develop the skills necessary to continue the productive use of Federally owned historic properties while meeting their stewardship responsibilities.

(e) The Council, in consultation with the National Park Service and other agencies, shall encourage and recognize exceptional achievement by such agencies in meeting the goals of the NHPA and this order. By March 31, 2004, the Council shall submit to the President and the heads of agencies recommendations to further stimulate initiative, creativity, and efficiency in the Federal stewardship of historic properties.

SEC. 5. *Promoting Preservation Through Heritage Tourism.*

(a) To the extent permitted by law and within existing resources, the Secretary of Commerce, working with the Council and other agencies, shall assist States, Indian tribes, and local communities in promoting the use of historic properties for heritage tourism and related economic development in a manner that contributes to the long-term preservation and productive use of those properties. Such assistance shall include efforts to strengthen and improve heritage tourism activities throughout the country as they relate to Federally owned historic properties and significant natural assets on Federal lands.

(b) Where consistent with agency missions and governing law, and where appropriate, agencies shall use historic properties in their ownership in conjunction with State, tribal, and local tourism programs to foster viable economic partnerships, including, but not limited to, cooperation and coordination with tourism officials and others with interests in the properties.

SEC. 6. *National and Homeland Security Considerations.*

Nothing in this order shall be construed to require any agency to take any action or disclose any information that would conflict with or compromise national and homeland security goals, policies, programs, or activities.

SEC. 7. *Definitions.* For the purposes of this order, the term "historic property" means any prehistoric or historic district, site, building, structure, and object included on or eligible for inclusion on the National Register of Historic Places in accordance with section 301(5) of the NHPA (16 U.S.C. 470w(5)). The term "heritage tourism" means the business and practice of attracting and accommodating visitors to a place or area based especially on the unique or special aspects of that locale's history, landscape (including trail systems), and culture. The terms "Federally owned" and "in Federal ownership," and similar terms, as used in

this order, do not include properties acquired by agencies as a result of foreclosure or similar actions and that are held for a period of less than 5 years.

SEC. 8. *Judicial Review.* This order is intended only to improve the internal management of the Federal Government and it is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or equity by a party against the United States, its departments, agencies, instrumentalities or entities, its officers or employees, or any other person.

GEORGE W. BUSH.

§ 470h-3. Lease or exchange of historic property

(a) Authorization; consultation with Council

Notwithstanding any other provision of law, any Federal agency after consultation with the Council, shall, to the extent practicable, establish and implement alternatives for historic properties, including adaptive use, that are not needed for current or projected agency purposes, and may lease an historic property owned by the agency to any person or organization, or exchange any property owned by the agency with comparable historic property, if the agency head determines that the lease or exchange will adequately insure the preservation of the historic property.

(b) Proceeds of lease for administration, etc., of property; deposit of surplus proceeds into Treasury

The proceeds of any lease under subsection (a) of this section may, notwithstanding any other provision of law, be retained by the agency entering into such lease and used to defray the costs of administration, maintenance, repair, and related expenses incurred by the agency with respect to such property or other properties which are on the National Register which are owned by, or are under the jurisdiction or control of, such agency. Any surplus proceeds from such leases shall be deposited into the Treasury of the United States at the end of the second fiscal year following the fiscal year in which such proceeds were received.

(c) Contracts for management of historic property

The head of any Federal agency having responsibility for the management of any historic property may, after consultation with the Advisory Council on Historic Preservation, enter into contracts for the management of such property. Any such contract shall contain such terms and conditions as the head of such agency deems necessary or appropriate to protect the interests of the United States and insure adequate preservation of the historic property.

(Pub. L. 89-665, title I, §111, as added Pub. L. 96-515, title II, §207, Dec. 12, 1980, 94 Stat. 2997; amended Pub. L. 102-575, title XL, §4013, Oct. 30, 1992, 106 Stat. 4761.)

AMENDMENTS

1992—Subsec. (a). Pub. L. 102-575 substituted "after consultation with the Council, shall, to the extent practicable, establish and implement alternatives for historic properties, including adaptive use, that are not needed for current or projected agency purposes, and may" for "may, after consultation with the Advisory Council on Historic Preservation,".

HISTORIC LEASE PROCESS SIMPLIFICATION

Pub. L. 105-391, title VIII, §802(b), Nov. 13, 1998, 112 Stat. 3523, provided that: "The Secretary is directed to