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BEFORE THE SUBCOMMITTEE ON NATIONAL PARKS, HOUSE COMMITTEE ON RESOURCES,
CONCERNING OVERSIGHT OF THE NATIONAL HISTORIC PRESERVATION ACT.

April 21, 2005

Mr. Chairman, thank you for the opportunity to provide an update on the accomplishments of America's national historic preservation program, authorized under the National Historic Preservation Act of 1966.

We understand that a bill to amend the National Historic Preservation Act (NHPA) may be introduced based on a discussion draft recently provided to the Department. We respectfully request that the Committee provide us an opportunity to share our views on the bill, should it be introduced, prior to moving forward with a bill. We also are interested in working with the Committee to resolve any unintended consequences resulting from the implementation of the NHPA. Our testimony today will discuss some of our concerns with the discussion draft and provide background on the nearly forty year history of the NHPA Program.

The NHPA establishes a collaborative approach to protect historic properties that embodies Secretary of the Interior Gale Norton's "Four Cs" – Communication, Consultation, and Cooperation, all in the service of Conservation. The NHPA creates partnerships among federal agencies, states, tribes, and local governments, which play a critical role in carrying out the key programs of the NHPA. These programs related to NHPA include the National Register of Historic Places, the section 106 consultation process, the Historic Preservation Fund, the Historic Preservation Tax Incentives Program, and Preserve America.

Governor-appointed State Historic Preservation Officers in 56 States and Territories assist citizens, units of local government, and public and private organizations to carry out their part of the national preservation program. State historic preservation programs locate, document, and assist citizens in nominating historic properties to the National Register, aid local governments and federal agencies in meeting historic preservation statutes, and assess the impact of federal projects on historic places. The work of state governments is essential to the preservation of our historic places.

Local governments also can play a formal role in the national preservation program by becoming Certified Local Governments. These important partners assist local citizens in inventorying historic buildings and neighborhoods, preserving and enhancing the historic values of these sites, working with local schools to ensure the next generation recognizes and values their local history, and coordinating with state governments to ensure the national historic preservation program meets local needs in the best manner possible.

Fifty-two tribal governments now have formally joined the national preservation program with established Tribal Preservation Officers. Tribal participation has enriched the national program by providing the Tribes' perspective on heritage, history, preservation, and sense of place.

Congress passed the NHPA of 1966 in response to the recommendations of a Special Committee on Historic Preservation of the U.S. Conference of Mayors. The conference urged that the United States establish a strong federal preservation program to support the recognition and protection of significant historic places in communities throughout the nation. Congress recognized in passing the NHPA that historical properties significant to the Nation's heritage were being lost or substantially altered at an increasing frequency.

As directed by Congress, the NHPA set in motion a process to reduce the loss of much of the nation's invaluable heritage and established the means for the federal government to provide leadership in the preservation of historic places in a unique partnership that remains highly effective today. The Conference of Mayors and others who lobbied for the passage of the Act knew then, as we know better now, that economic development and the health of communities are both dependent on preserving the richness and variety of America's heritage.

The National Register of Historic Places

One of our most widely recognized national institutions is the National Register of Historic Places. In addition to recognizing national significance, the National Register recognizes "local historic significance" with two thirds (67%) of the properties listed in our National Register for their significance to local citizens and local history. The National Register

now includes nearly 1.4 million properties in 79,000 listings nominated by citizens nationwide. There is hardly a city or town throughout the nation without a property listed in the National Register of Historic Places. Last fiscal year alone, 46,619 properties were listed in 1,537 nominations of historic places.

A Federal Preservation Officer, State Historic Preservation Officer, or Tribal Preservation Officer can nominate a property for listing in the National Register. During review of a proposed nomination, prior to being submitted to the Secretary, property owners and local officials are notified of the intent to nominate and public comment is solicited.

Owners of private property are given an opportunity to concur in or object to the nomination. If the owner of a private property, or the majority of private property owners for a property or district with multiple owners, objects to the nomination, the historic property cannot be listed in the National Register. In these instances, the property would be evaluated for a determination of eligibility. Less than 1 % of the nominations submitted to the Secretary are determinations of eligibility involving owner objections. Listing in the National Register or a determination of eligibility does not restrict a property owner from disposing of a historic property in any manner he or she sees fit. The private property owner is under no obligation to protect the historic property under federal law, and it can be torn down by its owner without federal government intervention.

The Section 106 Consultation Process

One of the primary reasons the NHPA has been so successful is because the consultation process under section 106 creates a means of assuring that historic properties are identified and considered in the federal planning process, including processes involved in the award of a federal grant or license. The section 106 consultation process requires a federal agency to determine if a proposed federal undertaking could affect historic properties. Historic properties include those listed in the National Register or those that are eligible for listing. If eligibility has not yet been determined, the federal agency can quickly and efficiently identify eligible properties through an informal consultation with the relevant state historic preservation offices or Tribal preservation offices. If questions arise about the eligibility of a given property, the more time-consuming process of a formal determination of eligibility may be sought.

The NHPA allows for flexibility for industries and agencies to comply with section 106 requirements while advancing and preserving the goal of protecting historic properties. The Advisory Council on Historic Preservation has the flexibility, under procedures which have undergone extensive public review, to develop administrative programmatic agreements tailored to the needs of specific federal programs. For example, this year the Federal Communications Commission implemented a nationwide programmatic agreement for the unique situation of constructing communication towers for wireless companies. It is this kind of flexibility allowed under the NHPA that has helped it adapt to new situations that have arisen over the past 39 years.

The Historic Preservation Fund

The NHPA also creates a national "cost-sharing" approach through the Historic Preservation Fund where the federal government provides a share of the financial resources needed to state, local and tribal governments, which, in turn, provide matching funds and share the benefits with citizens. The Historic Preservation Fund is a highly cost-effective cornerstone of the national preservation program with strong bipartisan support. It has been a model for state-legislated programs that provide grant monies based on programs designed under the NHPA. Certified Local Governments often use the 10% of the Historic Preservation Fund grants awarded to them for heritage tourism projects, which generates revenue for communities.

The Historic Preservation Tax Incentives Program

The Historic Preservation Tax Incentives Program, through the use of tax incentives, stimulates private-sector preservation and reuse of income-producing historic properties. Since its inception in 1976, the program has generated over \$33 billion in historic preservation activity; in FY 2004 alone, a record-setting \$3.88 billion in private investment was leveraged using federal historic preservation tax credits rehabilitating some 1,200 historic properties listed in the National Register and creating over 50,000 jobs and nearly 16,000 housing units.

The Advisory Council on Historic Preservation

The NHPA established the Advisory Council on Historic Preservation as the independent federal agency in the partnership dedicated to historic preservation and as the major policy advisor to federal agencies on historic preservation. The Council's members include representatives from every level of government and private citizens. It is the nation's advocate for full consideration of historic values in federal decision-making through its oversight of the section 106 process. The Council plays an essential role in reviewing federal programs and policies to further preservation efforts; providing training, guidance, and information to the public and federal entities; and recommending administrative and

legislative improvements for protecting the nation's heritage.

Preserve America

The Department is working in partnership with the Council to further the goals of the new Preserve America Executive Order 13287 signed by President Bush. This Executive Order directs federal agencies to inventory and promote greater use of historical sites in partnership with state, tribal, and local governments. This initiative will provide more opportunities for preservation while increasing tourism and economic development by promoting historic and cultural preservation and encouraging greater public appreciation of our nation's treasures.

We would like to note some of our concerns with the discussion draft that was provided to the Department. The discussion draft proposes changes to NHPA that would limit the historical data collected through the National Register process. Under the proposed change, eligibility determinations would not continue to be made on properties where the owner objects to listing. In a related section, the discussion draft proposes to limit current section 106 review requirements to properties listed in the National Register or formally determined eligible by the Secretary of the Interior. It is unclear what this change could be interpreted to mean. This change could be interpreted to mean that federal agencies simply could not consider the potential impact of their projects on historic properties currently identified as eligible through informal consultations between the state and federal governments. This interpretation would narrow the consideration of historic properties in the planning of federal projects and could place historic resources at risk. The discussion draft also could be interpreted to continue to require eligibility determinations, but through the imposition of a formal process through the Secretary of the Interior. This interpretation could place a tremendous administrative burden on the Department of the Interior and would result in a delay of federal projects. Most historic properties, including the Golden Gate Bridge and the Mission San Juan Capistrano in California, were neither listed on the National Register nor formally determined eligible by the Secretary at the time of a proposed federal undertaking. They were evaluated as eligible on the basis of informal consultation during the planning stage. Many important historic properties have yet to be listed.

The NHPA today acknowledges that finding and evaluating our historic places is ongoing. It is a process that requires federal agencies to develop enough information on federal projects to avoid needless destruction of those historic places. Many private property owners benefit from the current review process. Restricting the development of that information will inevitably lead to a cumbersome review process and destruction of important resources, including those that could enhance the value of private property, and that could easily have been avoided.

Last year, state historic preservation programs were asked by federal agencies to review approximately 104,172 federal projects. They found that in the vast majority (88,212) of these projects, no historic properties were identified or the proposed project was determined to have no effect on historic properties. As part of the informal consultation, states and federal agencies concurred that some 22,700 properties not previously recognized were, in their judgment, eligible for the National Register, and therefore should be considered in the federal planning process under section 106 of the NHPA. Under the discussion draft, those 22,700 properties would be eliminated from consideration during the federal planning process or would have had to undergo potentially lengthy formal eligibility determinations. Compared with the 22,700 properties determined eligible through informal consultations, only nineteen properties were formally determined eligible for the National Register by the Secretary as a part of the section 106 process.

Federal agencies can satisfy section 106 quickly and efficiently by working directly with state historic preservation offices to identify eligible properties and consider them in the federal planning process. Federal agencies currently use informal eligibility determinations under section 106 to fulfill other mandates required under other statutes, such as the Federal Land Management Policy Act (FLPMA). Without a reliable source of information on historic properties, additional processes and evaluations may need to be developed in order to meet the statutory requirements. Delays can occur in a wide variety of determinations made by the Secretary under FLPMA, including those related to minerals development.

State, local, and tribal governments have enacted laws that establish additional protections and, in some cases, financial incentives for listed or eligible properties beyond their consideration in the federal planning process under federal law. A number of states have passed statutes that require consideration of historic places in the planning of state projects similar to the requirement in section 106 of the NHPA, and that provide grants and tax incentives. More than 2,500 communities have local laws establishing historic preservation commissions, and nearly 1,500 of those communities have applied for and become Certified Local Governments under the NHPA.

Because history does not stop, the nation's understanding of what is worthy of preservation changes with the passage of time and the growing appreciation of the breadth and depth of our nation's heritage. The law passed in 1966 provides the flexibility needed to accommodate a nation's changing sense of what is historic and worthy of preservation. The NHPA has created a remarkable national partnership network, one in which state, tribal, and local governments play decisive and, in most ways, co-equal public roles to the federal government in a system that has worked well for nearly 40 years. The

federal government, acting through the National Park Service, sets professional and performance standards, provides technical assistance, advice, and training, and provides oversight and approval roles. But the on-the-ground work of the national preservation program directly involves citizen input and is delivered principally to our citizens through state, local, and tribal governments.

The authorization for the Historic Preservation Fund and the Advisory Council on Historic Preservation expires at the end of fiscal year 2005. Because of the success of the fund and the important role that the Advisory Council plays as a partner in our efforts to preserve historic places across the country, we look forward to working with the Committee to assure the continuation of this partnership in the coming years.

Mr. Chairman, this concludes my prepared remarks. I would be pleased to answer any questions you or members of the committee may have.