AUTHENTICATED
U.S. GOVERNMENT
INFORMATION
GPO

REAUTHORIZATION OF THE ADVISORY COUNCIL ON HISTORIC PRESERVATION AND PRIVATE PROPERTY PROTECTION UNDER THE NATIONAL HISTORIC PRESERVATION ACT

OVERSIGHT HEARING

BEFORE THE

SUBCOMMITTEE ON NATIONAL PARKS, RECREATION, AND PUBLIC LANDS

OF THE

COMMITTEE ON RESOURCES
U.S. HOUSE OF REPRESENTATIVES

ONE HUNDRED EIGHTH CONGRESS

FIRST SESSION

June 3, 2003

Serial No. 108-24

Printed for the use of the Committee on Resources

Available via the World Wide Web: http://www.access.gpo.gov/congress/house
or
Committee address: http://resourcescommittee.house.gov

U.S. GOVERNMENT PRINTING OFFICE

87-420 PS WASHINGTON : 2003

For sale by the Superintendent of Documents, U.S. Government Printing Office
Internet: bookstore.gpo.gov Phone: toll free (866) 512–1800; DC area (202) 512–1800
Fax: (202) 512–2250 Mail: Stop SSOP, Washington, DC 20402–0001

COMMITTEE ON RESOURCES

RICHARD W. POMBO, California, *Chairman*
NICK J. RAHALL II, West Virginia, *Ranking Democrat Member*

Don Young, Alaska
W.J. "Billy" Tauzin, Louisiana
Jim Saxton, New Jersey
Elton Gallegly, California
John J. Duncan, Jr., Tennessee
Wayne T. Gilchrest, Maryland
Ken Calvert, California
Scott McInnis, Colorado
Barbara Cubin, Wyoming
George Radanovich, California
Walter B. Jones, Jr., North Carolina
Chris Cannon, Utah
John E. Peterson, Pennsylvania
Jim Gibbons, Nevada,
Vice Chairman
Mark E. Souder, Indiana
Greg Walden, Oregon
Thomas G. Tancredo, Colorado
J.D. Hayworth, Arizona
Tom Osborne, Nebraska
Jeff Flake, Arizona
Dennis R. Rehberg, Montana
Rick Renzi, Arizona
Tom Cole, Oklahoma
Stevan Pearce, New Mexico
Rob Bishop, Utah
Devin Nunes, California
VACANCY

Dale E. Kildee, Michigan
Eni F.H. Faleomavaega, American Samoa
Neil Abercrombie, Hawaii
Solomon P. Ortiz, Texas
Frank Pallone, Jr., New Jersey
Calvin M. Dooley, California
Donna M. Christensen, Virgin Islands
Ron Kind, Wisconsin
Jay Inslee, Washington
Grace F. Napolitano, California
Tom Udall, New Mexico
Mark Udall, Colorado
Aníbal Acevedo-Vilá, Puerto Rico
Brad Carson, Oklahoma
Raúl M. Grijalva, Arizona
Dennis A. Cardoza, California
Madeleine Z. Bordallo, Guam
George Miller, California
Edward J. Markey, Massachusetts
Rubén Hinojosa, Texas
Ciro D. Rodriguez, Texas
Joe Baca, California
Betty McCollum, Minnesota

Steven J. Ding, *Chief of Staff*
Lisa Pittman, *Chief Counsel*
James H. Zoia, *Democrat Staff Director*
Jeffrey P. Petrich, *Democrat Chief Counsel*

SUBCOMMITTEE ON NATIONAL PARKS, RECREATION, AND PUBLIC LANDS

GEORGE P. RADANOVICH, California, *Chairman*
DONNA M. CHRISTENSEN, Virgin Islands, *Ranking Democrat Member*

Elton Gallegly, California
John J. Duncan, Jr., Tennessee
Wayne T. Gilchrest, Maryland
Barbara Cubin, Wyoming
Walter B. Jones, Jr., North Carolina
Chris Cannon, Utah
John E. Peterson, Pennsylvania
Jim Gibbons, Nevada
Mark E. Souder, Indiana
Rob Bishop, Utah
Richard W. Pombo, California, *ex officio*
Dale E. Kildee, Michigan
Ron Kind, Wisconsin
Tom Udall, New Mexico
Mark Udall, Colorado
Aníbal Acevedo-Vilá, Puerto Rico
Raúl M. Grijalva, Arizona
Dennis A. Cardoza, California
Madeleine Z. Bordallo, Guam
Nick J. Rahall II, West Virginia, *ex officio*

C O N T E N T S

	Page
Hearing held on June 3, 2003	1
Statement of Members:	
Christensen, Hon. Donna M., a Delegate to Congress from the Virgin Islands	3
Radanovich, Hon. George P., a Representative in Congress from the State of California	1
Prepared statement of	2
Statement of Witnesses:	
Bisno, Robert, Owner, Lincoln Place Apartments, Venice, California	20
Prepared statement of	22
Nau, John L., III, Chairman, Advisory Council on Historic Preservation, Washington, DC	8
Prepared statement of	9
Sanderson, Edward, President, National Conference of State Historic Preservation Officers, Washington, DC	14
Prepared statement of	16
Tiller, De Teel Patterson, Acting Associate Director for Cultural Resources, National Park Service, U.S. Department of the Interior, Washington, DC	4
Prepared statement of	6

OVERSIGHT HEARING ON THE REAUTHORIZATION OF THE ADVISORY COUNCIL ON HISTORIC PRESERVATION AND PRIVATE PROPERTY PROTECTION UNDER THE NATIONAL HISTORIC PRESERVATION ACT

Tuesday, June 3, 2003
U.S. House of Representatives
Subcommittee on National Parks, Recreation, and Public Lands
Committee on Resources
Washington, DC

The Subcommittee met, pursuant to call, at 2 p.m., in room 1334, Longworth House Office Building, Hon. George Radanovich [Chairman of the Subcommittee] presiding.

Mr. RADANOVICH. Good afternoon. The Subcommittee on National Parks, Recreation, and Public Lands will come to order.

STATEMENT OF THE HON. GEORGE RADANOVICH, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF CALIFORNIA

This afternoon the Subcommittee on National Parks, Recreation, and Public Lands will conduct an oversight hearing on private property protection under the National Historic Preservation Act and the reauthorization of the Advisory Council on Historic Preservation.

As you are aware, the Subcommittee has jurisdiction over the preservation of historic ruins and objects of interest on the public domain and other historic preservation programs and activities, including national monuments, historic sites and programs for international cooperation in the field of historic preservation.

I think it is important to take a moment here right now to clarify for those in the audience, as well as those listening via the Committee's audio system, what my reasoning is for calling this hearing today.

Recently, a case was brought to my attention where an application for eligibility was submitted by a third party for an apartment complex in Los Angeles, California. What concerns me with this case is two-fold. First, the owner of the apartment complex furiously objected to the application, yet it appears his pleas were largely ignored by the State historic preservation office; and,

second, what will be the effects from the case on the integrity of the National Historic Preservation Act.

Especially important to note is, in this case, was that before the application was even considered and nominated by the SHPO for eligibility, it was rejected by the city planning department, the planning commission, the city's cultural heritage commission, the city council, for not meeting the criteria for local significance.

Today, I am very concerned that this important Act, one that I support very much, will now become a tool used by preservationists and activists in State historic preservation offices to halt development or redevelopment of communities across our country.

For the record, I have always seen the National Historic Preservation Act and the Advisory Council as success stories because of the cooperative nature promoted between the Federal and State governments, preservationists and owners of historic property.

I believe John Nau, the chairman of the Advisory Council on Historic Preservation, who will testify today is a great example of someone who has taken personal responsibility to develop historic tourism as an economic development engine, thus giving historic preservation an economic basis.

I believe that we are all stewards of our past, or we should be, and that preservation of our cultural and historic resources is our collective responsibility as a society. In fact, I have long promoted a designated historic district in my hometown of Mariposa, California.

What I would like to understand today is, is the situation I briefly outlined—an anomaly or is there a dangerous trend developing across the country where third parties, such as apartment tenants, are taking advantage of the Act and its effect on local development to serve their own purposes? Consequently, should this Committee take action to prevent further abuse of the Act?

I look forward to the testimony of all of our witnesses today, especially Mr. Robert Bisno, the property owner in Los Angeles, who I referred to in my statement, and my good friend, Mr. John Nau.

At this time, I will yield to Mrs. Christensen, our Ranking Member for your opening statement. Donna.

[The prepared statement of Mr. Radanovich follows:]

Statement of The Honorable George Radanovich, Chairman, Subcommittee on National Parks, Recreation and Public lands

Good afternoon. The hearing will come to order.

This afternoon the Subcommittee on National Parks, Recreation and Public Lands will conduct an oversight hearing on private property protection under the National Historic Preservation Act and the reauthorization of the Advisory Council on Historic Preservation. As you are aware, the Subcommittee has jurisdiction over the preservation of prehistoric ruins and objects of interest on the public domain and other historic preservation programs and activities, including national monuments, historic sites and programs for international cooperation in the field of historic preservation.

I think it is important that I take a moment to clarify for those in the audience as well as those listening via the Committee's audio system what my reasoning is for calling this hearing today.

Recently, a case was brought to my attention where an application for eligibility was submitted by a third party for an apartment complex in Los Angeles, California. What concerns me with this case is twofold: First, the owner of the apartment complex furiously objected to the application, yet it appears his pleas were largely ignored by the State Historic Preservation Office, and second, what will be

the effects from this case on the integrity of the National Historic Preservation Act. Especially important to note in this case was that before the application was even considered and nominated by the SHPO for eligibility, it was rejected by the city planning department, the planning commission, the city's cultural heritage commission and the city council for not meeting the criteria for local significance.

Today, I am very concerned that this important Act will now become a tool used by preservationists and activists in State Historic Preservation Offices to halt development or redevelopment of communities across our country.

For the record, I have always seen the National Historic Preservation Act and the Advisory Council as success stories because of the cooperative nature promoted between the Federal and State governments, preservationists, and owners of historic property. I believe John Nau, Chairman of the Advisory Council for Historic Preservation, who will testify today, is a good example of someone who has taken personal responsibility to develop historic tourism as an economic development engine, thus giving historic preservation an economic basis. I believe that we are all stewards of our past, and that preservation of our cultural and historic resources is our collective responsibility as a society. In fact, I have long promoted a designated historic district in my hometown of Mariposa, California, which includes the John C. Fremont adobe.

What I would like to understand today is, is the situation I briefly outlined an anomaly, or is there a dangerous trend developing across the country where third parties, such as apartment tenants, are taking advantage of the Act and its effects on local development to serve their own purposes. Consequently, should this Committee take action to prevent further abuse of the Act.

I look forward to the testimony of all of our witnesses today, especially Mr. Robert Bisno, the property owner I referred to in my statement.

At this time, I yield to Ms. Christensen, our Ranking Member, for her opening statement.

STATEMENT OF THE HON. DONNA M. CHRISTENSEN, A DELEGATE TO CONGRESS FROM THE TERRITORY OF THE VIRGIN ISLANDS

Mrs. CHRISTENSEN. Thank you, Mr. Chairman.

For nearly 40 years, the Historic Preservation Act has provided the backbone of a national strategy for the preservation of valuable pieces of American history. Under the Act, the National Park Service, the National Council on Historic Preservation, State historic preservation officers, local preservation organizations and private individuals worked together in a cooperative process to identify, protect and preserve significant American treasures.

Importantly, this is not a Federally directed system. Nominations come from individuals and from local organizations. These nominations are then evaluated by the State historic preservation officers appointed at the State level who are given broad latitude regarding whether such nominations merit consideration at the Federal level or not.

Flexibility, grassroots involvement and careful professional consideration of nominations have been hallmarks of this process. Obviously, the National Council on Historic Preservation plays a critical role in ensuring that no Federal action will unnecessarily impact historic property.

Authorization of funding of the Council expires at the end of the 2005 fiscal year. In our view, the Council has always done its job well, but we look forward to hearing from our witnesses regarding any improvements to existing law that might help the Council perform its valuable functions more effectively.

However, we find the inclusion of private property rights on the Subcommittee agenda today somewhat puzzling. Nothing in the Historic Preservation Act prevents the owner of private property

listed in the Register or property deemed eligible for such listing from doing as he or she wishes with that property.

A privately owned building listed in the National Register may even be demolished by the owner at any time under Federal law. Furthermore, private property may not be included in the Register without the consent of the owner.

Given these circumstances, it is unclear how the Act might affect private property rights, but we look forward to any insight that any of our witnesses may be able to provide in this regard.

Finally, Mr. Chairman, we would like to thank our witnesses for their time and effort to be here today. We understand that each of them are here because they value historic preservation, and we look forward to their testimony.

Mr. RADANOVICH. Thank you.

Is there any other member wishing to make an opening statement? Thank you very much. Thank you, Donna.

I want to welcome our panel here today. If the folks would please come forward and take their position. I want to welcome Mr. deTeel Patterson Tiller, Acting Associate Director For Cultural Resources at National Park Service in Washington, D.C.; Mr. John Nau, the Chairman of the Advisory Council on Historic Preservation here in Washington, D.C.; Mr. Edward Sanderson, President of the National Conference of State Historic Preservation Officers, Washington, D.C.; and Mr. Robert Bisno, the owner of Lincoln Place Apartments in Venice, California.

Gentlemen, welcome to the Committee. I appreciate the fact that you are here today.

The way we will do this is allow every one of you to deliver your testimony for 5 minutes. If that is a little longer than your opening statement or the written statement or the text statement that you have, please know that that will be submitted to the record and will be entered just as well as your voice comments.

So if you could keep your comments as close to 5 minutes as possible, it would be much appreciated. It would help the hearing to move on a little bit quicker.

The lights in front of you, they run just like traffic lights. Red means stop, yellow means slow down, and green means go.

Mr. RADANOVICH. So welcome, Mr. Tiller. If you would like to begin, and then we will work right on down. Then we will open up.

STATEMENT OF DeTEEL PATTERSON TILLER, ACTING ASSOCIATE DIRECTOR FOR CULTURAL RESOURCES, NATIONAL PARK SERVICE, WASHINGTON, D.C.

Mr. TILLER. Mr. Chairman, thank you for the opportunity to provide the Committee a brief report on America's national historic preservation program authorized under the National Historic Preservation Act and to provide support for the reauthorization of the Advisory Council on Historic Preservation under the same Act.

In the interest of brevity, I will summarize my full report already submitted to the Committee.

Thirty-seven years ago, a Special Committee on Historic Preservation of the U.S. Conference of Mayors recommended that our Nation adopt a public policy in support of the preservation and protection of our Nation's significant historic places for the benefit of

future generations. Out of that recommendation Congress pass the National Historic Preservation Act of 1996. The Act set in motion a means for all our citizens, with the assistance of their Federal Government, to reduce the loss of this Nation's invaluable heritage.

I am pleased to report that the nearly 4-decade-old Act remains healthy and vigorous. The National Historic Preservation Act created some of the Nation's most widely recognized, successful and iconic national institutions like the National Register of Historic Places.

The Register now lists over 1.2 million properties and 76,000 listings nominated by our citizens from Maine to Hawaii. There is hardly a city or town in this great Nation that is without a listed property. America's National Register is unique in the world as that process by which the properties are nominated is bottom up. The overwhelming number of nominations are submitted by citizens, local governments, town councils and State governments.

Our National Register is unique also in its recognition of local significance. No other national system does that. Fully two-thirds of the property listed in America's national register are designated for their significance to local citizens and local history. This policy was borne of the congressional vision that local citizens and their local and State governments knew better those places important to preserve for the next generations and not the Federal Government.

We are also singular among nations in that the listing of the National Register confers no restrictions by the Federal Government on a property owner's decision to dispose of that historic place in any manner he or she sees fits, except in those rare circumstances where the owner has accepted Federal funding for the preservation of the property or received Federal tax credits.

In cases where a property has been listed or determined to be eligible for listing in the National Register, a private property owner is under no obligation to the Federal Government to protect or preserve the historic property.

The National Historic Preservation Act also created a remarkable national partnership network, one in which States, tribal and local governments play decisive and, in most ways, coequal roles to the Federal Government. The Federal Government, acting through the National Park Service, sets professional standards, provides technical assistance and training and provides oversight and approval roles where a Federal hand is warranted and appropriate.

But the on-the-ground work of the national preservation program directly involves citizen input and is delivered principally to them through State and local governments and, most recently, through tribal governments. It is this complex partnership network to which can be credited the national program's great success.

I would now like to turn my comments to the reauthorization of the Advisory Council on Historic Preservation. The 1966 National Historic Preservation Act also created the Advisory Council as part of this unique national partnership. The Department of the Interior and the Advisory Council have a long and close working relationship. Together with our partners in State, tribal and local governments, we have enhanced historic preservation efforts across the Nation for more than 30 years.

The Department strongly supports reauthorization of the Council. The Council serves a critical national role in the national historic preservation program and remains a vital part of this success story in America.

Mr. Chairman, this concludes my remarks. I will be more than pleased to answer any questions you or the Committee members have.

Mr. RADANOVICH. Thank you very much, Mr. Tiller.

[The prepared statement of Mr. Tiller follows:]

Statement of De Teel Patterson Tiller, Acting Associate Director for Cultural Resources, National Park Service, U.S. Department of the Interior

Mr. Chairman, thank you for the opportunity to provide the committee with a brief report on America's national historic preservation program authorized under the National Historic Preservation Act of 1966 and to provide support for the reauthorization of the Advisory Council on Historic Preservation under that same act.

Thirty-seven years ago, a Special Committee on Historic Preservation of the U.S. Conference of Mayors recommended that the United States adopt a public policy in support of the preservation and protection of our country's significant historic places for future generations of Americans. In that report, the Special Committee also made broad recommendations on the pressing need for this nation to establish a strong Federal historic preservation program.

In response to the Conference of Mayors Report, Congress passed the National Historic Preservation Act of 1966 establishing a national historic preservation program. The National Historic Preservation Act (NHPA) set in motion a process to reduce the loss of much of this nation's invaluable heritage and established the means for the Federal Government to protect and preserve our nation's historic places in a unique partnership that remains effective to this day.

We are pleased to report that the nearly four-decade-old act and vision it created, remains healthy and rigorous. The 37-year history of this important national program has shown that the Conference of Mayors was correct—economic development can go hand-in-hand with preserving America's heritage.

The NHPA created some of our most widely recognized national institutions like the National Register of Historic Places. The National Register now includes over 1.2 million properties in 76,000 listings nominated by citizens from Maine to Hawaii, Alaska to Puerto Rico, and in American Samoa and the U.S. Virgin Islands. There is hardly a city or town without a property listed on the National Register of Historic Places. Last fiscal year alone, 40,141 properties were listed in 1,454 nominations representing every state in the country.

The National Register is unique in its recognition of "local historic significance." No other national system does this. Today, two thirds (66%) of the properties listed on our National Register are designated for their significance to local citizens and local history. That policy is based on a vision borne almost 40 years ago that local citizens and their local and state governments know best those places important to preserve a unique sense of history and community for future generations—and not the Federal Government.

Listing in the National Register does not restrict a property owner from disposing of the historic place in any manner he or she sees fit except, in those rare circumstances, when the owner has accepted Federal funding for the property. In cases where a property has been listed or determined to be eligible for listing in the National Register, a private property owner is under no obligation to protect the historic property and it can be torn down by its owner without Federal Government intervention.

The NHPA has created also 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. 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 and local governments, and more recently, tribal governments. It is this complex partnership network to which can be credited the national program's great success.

The NHPA created an effective national "cost-sharing" approach where the Federal Government provides a share of the financial resources needed to local, tribal, and state governments, who, in turn, provide a portion as well while the benefits

are shared by citizens. A 1976 amendment to the NHPA created the Historic Preservation Fund so that revenues from Outer Continental Shelf extraction could pay the Federal share in the protection of our nation's prehistoric and historic treasures. The Historic Preservation Fund is highly cost-effective and remains an important cornerstone in this national program. The fund has always had strong bipartisan support and has been reauthorized three times since its creation.

State 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. Activities include locating and documenting prehistoric and historic properties, assisting citizens to nominate properties to the National Register, assisting local governments and Federal agencies in meeting historic preservation statutes, and assessing the impact of Federal projects on historic places. Last year, states reviewed over 100,000 Federal projects to minimize their impacts on our nation's heritage and historic places. The work of state governments in this program is invaluable.

The Historic Preservation Tax Incentives Program, jointly administered by the National Park Service and State Historic Preservation Officers, is the nation's largest program to stimulate the preservation and reuse of income-producing historic properties. Since its inception in 1976, it has generated over $28 billion in historic preservation activity; in Fiscal Year 2002 alone, a record-setting $3.2 billion in private investment was leveraged using Federal historic preservation tax credits rehabilitating over 1,200 historic properties listed on the National Register and creating over 50,000 jobs and 14,000 housing units.

Local governments received a formal role in the national preservation program in the 1980 amendments to the NHPA. These important partners assist local citizens to preserve their neighborhoods and local historic district values, to work with local schools to ensure the next generation recognizes and values their local history, and to work hand-in-hand with state governments to ensure the national historic preservation program meets local needs in the best manner possible.

The 1992 amendments to the law brought a more inclusive and formal role for tribal governments in the national program, and we are pleased to report that as of today, 37 tribal governments have formally joined the national program. Tribal participation in the national program has brought an energy and different way of thinking about heritage, history, preservation and sense of place.

The nation's understanding of what is worthy of preservation has also changed since the 1960's. As an example, where once we focused on the grand houses of the Founding Fathers, battlefields, and homes of the rich and famous, we now include the record of everyday lives, farmsteads, vernacular architecture, and, the recent past. Now that the 20th century itself is history, the field of historic places worthy of preservation now gives way to "modern" American stories like World War II, Rock and Roll, the Cold War, and the Civil Rights struggle. As the nation changes in diversity and complexity, we must ensure that the history of all Americans is identified, honored, and preserved. Fortunately, the law passed in 1966 was flexible enough to accommodate a nation's changing sense of what is historic and worthy of preservation.

The 1966 NHPA also created the Advisory Council on Historic Preservation as part of this national partnership. An independent Federal agency dedicated to historic preservation, the Council is the major policy advisor to Federal agencies on historic preservation. The Council is comprised of 20 members, including Federal agencies, private citizens and experts in the field of historic preservation. Its mission is to advocate full consideration of historic values in Federal decision making; to oversee the Section 106 process which requires Federal agencies to consider the impact of their programs and projects on places of historic value; to review Federal programs and policies to further preservation efforts; to provide training, guidance, and information to the public and Federal entities; and to recommend administrative and legislative improvements for protecting the nation's heritage.

For more than 30 years, the Department of the Interior and the Advisory Council have worked together to enhance historic preservation efforts across the nation. The Department looks forward to continuing this relationship with the Council as we implement one of the most far-reaching and important Federal policies on historic preservation in the past 20 years. The Department supports reauthorization of the Advisory Council on Historic Preservation.

On March 3, President Bush launched the Preserve America Initiative by the signing of Executive Order 13281. This Executive Order focuses on the sound public policy that historic preservation makes good economic sense. The Federal Government can play an important role in assisting local and state governments to realize this potential through such efforts as heritage tourism, which can bring economic benefits to communities throughout the nation.

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

Mr. RADANOVICH. Mr. John Nau, welcome to the Subcommittee. If you would like to begin your testimony, that would be great.

STATEMENT OF JOHN NAU, CHAIRMAN, ADVISORY COUNCIL ON HISTORIC PRESERVATION, WASHINGTON, D.C.

Mr. NAU. Thank you, Mr. Chairman.

Chairman Radanovich and members of the Subcommittee, it is a pleasure to testify before you this afternoon. I thank you for this opportunity to discuss the vital importance of the Federal Historic Preservation Program to our Nation and the essential role of the Advisory Council on Historic Preservation in that effort.

The National Historic Preservation Act, which created the ACHP, is a strong demonstration of the collective wisdom of the U.S. Congress in three vital regards: the importance of preserving America's heritage; the necessity of building upon the foundation of our past to create a better future for the Nation; and the strength of linking the Federal, State and local efforts in partnerships with the private sector in order to accomplish these goals.

The ACHP is actively involved in pursuing these goals on behalf of the Congress, the President, and, most importantly, the American people. It has been actively involved in changing itself to better meet these needs through wise stewardship of the Federal Government's historic assets that can stimulate economic development through activities such as heritage tourism.

To this end, the ACHP has focused its energies on reestablishing the leadership role that the framers of the 1966 Act envisioned. As part of that effort, on March 2nd, 2003, President Bush signed Executive Order 13287, Preserve America.

The same day, our First Lady, Laura Bush, announced the Administration's Preserve America Initiative, a governmentwide effort to recognize and celebrate our heritage. This step will guide our efforts into the foreseeable future. The underpinnings of the Preserve America Initiative are found in the policy statement of the Executive Order.

This policy also articulates the approach of the ACHP's work over the coming years. I have taken steps to recast the ACHP to more efficiently accomplish its mission in accordance with this Executive Order.

We are leveraging our resources and, most importantly, building partnerships to promote the benefits of preservation across our Nation. We know that the Federal Government works best when it works in partnership with States, counties, communities, tribes, in short, when it works in partnership with the constituents that you all represent.

The Preserve America Initiative promotes such activity, and the Executive Order directs Federal agencies to actively engage in these partnerships. Our job is to encourage the integration of the historic resources that are managed at the Federal, State and local level with community development opportunities. We are building successful partnerships with a number of other Federal agencies,

and it is our commitment that we will continue to build on those relationships to maximize our efficiency and effectiveness.

Might I add that, as a businessman, I would not be here if I didn't believe on a clear return on this investment; and in my experience as Chairman of the Texas Historical Commission, I know that this approach will work. I have seen it work, and I have experience in making it work. I know with your support we can make it work on a national basis.

We are before the Committee today because your assistance is essential to allow us to realize our expanded role. ACHP members have carefully examined our current legislative authorities, which include the administration of Section 106. Section 106 is a very important and significant responsibility. However, we believe our mission is broader and have adopted several proposed changes for which we seek your support.

These changes are: amend the current time limit and authorization and replace it with permanent appropriations authorization; authorize the President to add the heads of three additional Federal agencies to our membership; provide us with the authority and direction to work cooperatively with Federal funding agencies to assist them in using their existing grants programs more effectively for advancing the purpose of the NHPA; and authorize several technical amendments that would allow us to function more rationally and efficiently.

You have also asked us in our appearance today to discuss our views on the adequacy of protections for private property owners during the process of evaluating and listing properties on the National Register.

The Register is the keystone of the National Historic Preservation Program. In my judgment, the overall process works well on the national level, especially in regard to the Section 106 process that we oversee.

I believe that as a function of Federal law and Federal administrative practice there are adequate protections for the rights of private property owners within this process. I do, however, share concerns with some unintended consequences that the National Register process may have at State and local levels.

A determination of eligibility for nomination to the National Register should not, by itself, automatically trigger or link to a State or local review process without due process and additional protections for private property owner's rights.

I look forward to the questions and having an opportunity to expand on my comments. Thank you, Mr. Chairman.

Mr. RADANOVICH. Thank you, Mr. Nau.

[The prepared statement of Mr. Nau follows:]

Statement of John L. Nau, III, Chairman,
Advisory Council on Historic Preservation

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, the ACHP seeks 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 ACHP offers amendments to its 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. As part of that responsibility, and as requested by the Subcommittee, the ACHP also provides its views on the adequacy of protections for private property owners in the process of evaluating properties for inclusion in the National Register of Historic Places.

BACKGROUND

The ACHP was established by Title II of the NHPA. 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 Fiscal Year 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 when historic properties they value may be affected.

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 coordinates the national program, assisting 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 2002, I have tried to ensure that the ACHP takes the leadership role envisioned for it in NHPA. 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.

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.

With the new direction, the ACHP members are committed to promoting the preservation and appreciation of historic properties across the Nation by undertaking new initiatives that include:

- developing an Executive order (Executive Order 13287, "Preserve America," signed by the President March 3, 2003) 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;
- creating an initiative for the White House ("Preserve America," announced by First Lady Laura Bush March 3, 2003) to stimulate creative partnerships among all levels of government and the private sector to preserve and actively use historic resources to stimulate a better appreciation of America's history and diversity;
- using Council meetings to learn from local government and citizens how the Federal Government can effectively participate in local heritage tourism initiatives and promote these strategies to Federal agencies and tourism professionals;
- effectively communicating its mission and activities to its stakeholders as well as the general public;
- pursuing partnerships with Federal agencies to streamline and increase the effectiveness of the Federal historic preservation review process; and
- improving the Native American program, which the ACHP has identified as a critical element in the implementation of an effective Federal historic preservation program and review process.

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.

In 2002 we reorganized the ACHP membership and staff to expand the members' role and to enhance work efficiencies as well as member-staff interaction. To best use the talents and energy of the 20 Council members and ensure that they fully participate in advancing the ACHP's goals and programs, three member program committees were created: Federal Agency Programs; Preservation Initiatives; and Communications, Education, and Outreach.

In addition, we created an Executive Committee comprised of myself and the vice chairman of the ACHP and the chairman of each of the other committees to assist in the governance of the ACHP. Several times a year, we appoint panels of members to formulate comments on Section 106 cases. Member task forces and committees are also formed to pursue specific tasks, such as policy development or regulatory reform oversight. On average, three such subgroups are at work at any given time during the year. Each meets about five to six times in the course of its existence, is served by one to three staff members, and produces reports, comments, and policy recommendations.

The staff carries out the day-to-day work of the ACHP and provides all support services for Council members. 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, who is based in the Washington, DC, office; there is also a small field office in Lakewood, Colorado.

PROPOSED AMENDMENTS TO THE NATIONAL HISTORIC PRESERVATION ACT

Background to Reauthorization. The ACHP has traditionally had its appropriations authorized on a multi-year cycle in Title II of NHPA (Section 212, 16 U.S.C. 470t). The current cycle runs through Fiscal Year 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.

For Fiscal Year 2004, the President's budget seeks $4.1 million for the ACHP. Because this is over the authorization limit, the Executive Office of the President directed the ACHP to propose any legislation required to modify its authorization to be consistent with the President's Budget. The ACHP is therefore seeking amendments to the authorizing legislation at this time. At its February and May 2003 meetings, the ACHP endorsed an approach to the reauthorization issue. The approach addresses the immediate appropriations authority issue and also seeks amendments to the ACHP's composition and authorities to better enable the ACHP to achieve its mission goals. The changes proposed by the ACHP are explained in this overview; specific statutory language will be provided to the Subcommittee at a later date.

Appropriations Authorization. This section 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 give it 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 section 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 section would give the ACHP the authority and direction to work cooperatively with Federal funding agencies to assist them in determining appropriate uses of their existing grants programs for advancing the purposes of NHPA. For example, it is our experience that programs such as the Historic Preservation Fund (HPF) administered through the States by the Department of the Interior have the flexibility to provide matching seed money to a local non-profit organization to support a heritage tourism program.

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 would also allow

the ACHP to work cooperatively with Federal funding agencies in the administration of their grant programs.

Technical Amendments. This section 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.
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.
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.
4. Adjust the quorum requirements to accommodate expanded ACHP membership.

VIEWS ON THE ADEQUACY OF PRIVATE PROPERTY PROTECTIONS IN THE NATIONAL REGISTER PROCESS

The Committee has requested our views on the adequacy of protections for private property owners during the process for evaluating and registering properties for inclusion in the National Register of Historic Places.

The National Register is the keystone of the National Historic Preservation Program. Through the professional application of objective criteria, a comprehensive listing of what is truly important in American history has been systematically compiled. The ACHP has direct experience with the National Register review and evaluation process through its administration of Section 106 of NHPA. As part of planning, unless properties are already listed in the National Register of Historic Places, determinations of eligibility for inclusion in the National Register must be made when such properties may be impacted by Federal or Federally assisted actions.

We are unaware of problems with the protection of the rights of private property owners in the Section 106 process, since the determination is made for planning purposes only and for consideration by Federal agencies in taking into account the effects of their actions.

We do believe it is important to distinguish between actual listing in the National Register, which may result in tax and other benefits and legally must include opportunities for property owners to object to such listing, and determinations of eligibility which are used for Federal planning. It is our understanding that in rare instances, some States' legislation and some local ordinances include "eligibility for inclusion in the National Register" to trigger the State or local review process. It is our opinion that determinations of eligibility should not by themselves automatically trigger or link to a State or local review process without due process and additional protections of private property owners' rights. It is also our understanding that State Historic Preservation Offices, such as Texas, are generally discouraging eligibility from being included in State laws and local ordinances to ensure adequate private property protections.

States have varying approaches to dealing with the overall issue of notification and objection. Public notices, hearings, and other mechanisms are used when large historic districts are being considered. In the case of smaller districts or individual properties, written notification is provided. In Texas, notifications are sent out to the property owner, the county judge, the chief elected official, and the local preservation board chair of pending listings in the National Register with an opportunity for making their views known. In New York, if an objection to a nomination is received from an owner, that nomination does not proceed. An official representative from the New York State Historic Preservation Office will speak with the property owner and explain the effects of listing in the National Register. In many instances, owners will withdraw their objections once they understand the implication of such listing.

In summary, we think that as a function of Federal law and Federal administrative practice there are generally adequate protections for the rights of private property owners in the National Register process.

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. We believe that reauthorization, 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.

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

Mr. RADANOVICH. Next is Mr. Edward Sanderson.

Mr. Sanderson, welcome to the Committee; and you may begin your testimony.

STATEMENT OF EDWARD SANDERSON, PRESIDENT, NATIONAL CONFERENCE OF STATE HISTORIC PRESERVATION OFFICERS, WASHINGTON, D.C.

Mr. SANDERSON. Thank you, Mr. Chairman. I am pleased to represent the National Conference of State Historic Preservation Officers at this hearing.

As you know, the SHPOs are the State officials appointed by their Governors who actually carry out the National Historic Preservation Act on behalf of the Secretary of the Department of the Interior and the Advisory Council on Historic Preservation.

You have asked us to address the reauthorization of the Advisory Council and to report to you on our sense of the status of the National Historic Preservation Act.

In regard to the Advisory Council, our report is brief. We are wholehearted supporters of the Advisory Council. We think they are doing an excellent job. We strongly support their reauthorization with the modest expansion of authority that they have requested.

In regards to the National Historic Preservation Act, we are pleased with the leadership that President Bush and Mrs. Bush have exercised just this year in establishing the Preserve America Program, and we believe that carries forward the work of the National Historic Preservation Act begun in 1966.

As has been described, the Act created a program that is carried out by States on behalf of the Federal Government. Through the National Register of Historic Places the program records the history of America as a nation and as individual communities, and more than a million properties are currently so designated.

Through the program, historic preservation works with local communities. Today more than 1,400 communities are working as partners with SHPOs. I expect more will choose to join with the Presidents new initiative. And perhaps most important, the program is putting historic sites back to work. It is saving them and putting them to productive use.

For example, working with the Advisory Council, more than 100,000 projects a year are successfully resolved at the State level to make sure that Federal projects avoid unnecessary impacts to historic properties; and working with the private sector since 1976, more than 30,000 private property owners have rehabilitated their historic properties and have enjoyed the incentives of Federal tax

credits. Private investment through this program has totaled $29 billion and has helped to create needed housing as well as ongoing creation of jobs and places of business.

The National Historic Preservation Act has not succeeded in every area. I like to think of the preservation program as a high-performance car manufactured by the wise authorizing committees of Congress. But we can't win the race without higher octane fuel provided by the appropriators. In the last 25 years, only one-third of the total authorized revenue in the Federal Historic Preservation Fund has ever been appropriated, and underfunding means that many areas still lack a reliable inventory of their historic resources. We can't preserve America's heritage if we don't know where it is. Underfunding means that local landmarks in town centers need preservation grants. Save America's Treasures Grants have successfully helped to restore some of our greatest national treasures, but properties that are important at the local level are going without.

And underfunding means that Federal costs are transferred to the private sector, as uncompleted work and program review delays inevitably impact private development projects.

Let me turn now for a moment to your request about how the National Register affects private property owners.

Respect for private owners is a fundamental principle of the National Register and certainly of State Historic Preservation Offices. As has been noted, listing on the National Register does not place Federal restrictions on how private property owners use their property. Only Federal actions are restricted or reviewed by National Register listing; and over the last 10 years, less than 1 percent of the total number of nominations listed on the National Register have involved an owner objection at all. Ninety-nine out of one hundred owners are satisfied customers with the program as it is.

The National Register process is defined in Federal regulations that all SHPOs are required to follow. The process includes checks and balances that protect property owners rights. SHPOs are required to follow this process, and a SHPO may not refuse to consider a properly documented nomination that is presented to him or her.

The National Register information is checked three different times, by the professional review of the SHPO and its staff, it is checked by the independent expert State review board, and then it is checked a third time here in Washington by the Keeper of the National Register and her staff at the National Park Service.

Private property rights are explicitly recognized in the regulations. Owners are notified of the process and given an opportunity to comment on nominations. They routinely provide information to the SHPO to consider in the process of reviewing nominations and provide information both to the Keeper and to the State review board.

If an owner objects to the listing, the property may not be listed on the Register, although the Keeper may go through a determination of eligibility process. Throughout the system, there is a series of checks and balances to make sure that no one authority, particu-

larly at the State level, can run roughshod over the rights of the property owner or the accuracy of the information presented.

In preparing for this hearing, I spoke with my colleagues around the country. Most SHPOs report they almost never have owners object to National Register listing, primarily because property owners want to get on the Register, and SHPOs spend limited resources working on the nomination of properties that are supported rather than opposed.

I believe the National Register is working well. I would be glad to work with the Committee, with property owners and other partners to investigate any potential improvements that might be needed.

Mr. RADANOVICH. Thank you, Mr. Sanderson for your testimony.

[The prepared statement of Mr. Sanderson follows:]

Statement of Edward Sanderson, President, National Conference of State Historic Preservation Officers, and Executive Director, Rhode Island Historical Preservation and Heritage Commission

I. Introduction

The Subcommittee on National Parks, Recreation and Public Lands has asked the National Conference of State Historic Preservation Officers (NCSHPO) to testify on the following topics.

1. Reauthorization of the Advisory Council on Historic Preservation
2. Implementation of the National Historic Preservation Act

The National Conference of State Historic Preservation Officers is the professional association of the gubernatorially appointed State officials who carry out the National Historic Preservation Act (Act, 16 U.S.C. 470) for the Secretary of the Interior and the Advisory Council on Historic Preservation (ACHP). States pay for half of the cost of carrying out this Federal program. State Historic Preservation Offices (SHPOs) have a direct, hands-on, daily involvement with the Act and are well suited to inform the Committee. [1]

II. Reauthorization of the Advisory Council on Historic Preservation

In general, the National Conference supports the reauthorization of the Advisory Council on Historic Preservation. As a statutory member of the ACHP, the National Conference was a part of the February 2003 meeting when the Council voted to propose legislative changes. We supported the amendments: chiefly, a permanent authorization with no appropriations ceiling and increasing the Federal agency membership on the Council. We believe these changes are needed so that the ACHP can continue its excellent work and carry out the mandates of the President's Preserve America program and Executive Order 13278. However, since the National Conference of State Historic Preservation Officers has not seen the bill language, we are unable to comment on it specifically.

The National Conference has direct experience with the activities of the ACHP through the role of the SHPOs and the National Conference's seat on the Council. The ACHP regulations implementing Section 106 of the National Historic Preservation Act (36 CFR Part 800) set up a process for Federal agencies to identify areas that may be potentially impacted by Federal projects, find the historic properties in those areas, and, should adverse impacts to historic properties exist, consider eliminating or mitigating those impacts. Federal agencies, under the ACHP regulations, must consult with State Historic Preservation Officers in making those decisions. [2]

---

[1] The Act authorizes Indian tribes to choose to assume the responsibilities of State Historic Preservation Officers on tribal lands. The National Conference supports tribal involvement in the national preservation program; SHPOs work closely with tribes in their States. The National Conference respects the government-to-government relationship of tribes to the Federal Government. Therefore, our remarks represent the opinions of SHPOs only. The NCSHPO encourages the Committee to seek tribal views on the Act.

[2] The SHPOs conduct 99% of the preservation consultation work required by the ACHP regulations. Every year SHPOs review 100,000 Federal undertakings for their potential impact on historic properties. In working with Federal agencies, SHPOs agree that 90,000 of those undertakings have no effect on historic properties. Federal agencies and the SHPOs resolve the effects on historic properties in the remaining 10,000 projects. The Council staff, under the current regulations will be involved in a few hundred projects. The Presidentially appointed Council members consider approximately ten cases a year.

III. Implementation of the National Historic Preservation Act

Secondly, the Committee has asked the National Conference of State Historic Preservation Officers to comment on the implementation of the National Historic Preservation Act. The following discusses the priority of historic preservation in the Administration, the successes of the program, the failures, and the relationship of private property rights and the National Register.

A. Historic Preservation: a Priority for the Bush Administration

Historic preservation is a national priority of the Bush Administration. On March 3, 2003, the President and the First Lady launched Preserve America, a multi-component program to improve Federal stewardship of historic places (Executive Order 13287), to recognize achievement in historic preservation, to acknowledge and celebrate the historic preservation activities of communities across the country (Preserve America Communities), and to facilitate economic development through heritage tourism.

* * * * *

PRESERVE AMERICA

The First Lady reiterated what every preservationist has long believed in her Preserve America speech on March 3, 2003, as is illustrated by the following quotes.

"Our land is the foundation upon which the American story is written. Our history is rooted in our buildings, parks and towns.

"The second goal of Preserve America is to support community efforts to restore cultural resources for heritage tourism.

"Preserve America. . . will provide. . .greater support to protect and restore our nation's culture. . . from monuments and buildings to landscapes and main streets.

"Preserve America will promote historic and cultural preservation and encourage greater public appreciation of our national treasures.

* * * * *

B. The Role of the State Historic Preservation Officers

The National Historic Preservation Act sets up the national historic preservation program. The Act charges the State Historic Preservation Officers with the following tasks.

1. find historic places and maintain information about them for future research and analysis,
2. working with private property owners, nominate significant places to the National Register,
3. work with local governments who are interested in historic preservation and help them receive the Secretary's certification,
4. help private owners seeking a Federal rehabilitation tax credit,
5. consult with Federal agencies on Federal activities that may affect historic places, and
6. conduct planning and educational activities on historic preservation for interested parties in the private and public sectors.

C. Historic Preservation a National Success Story

1. Historic preservation stimulates the economy

The national historic preservation program, run by the SHPOs, stimulates the economy. The rehabilitation of National Register properties using the Federal investment tax credit recently is generating $3 billion in private investment annually. The owners of the 1,202 rehab tax credit projects undertaken in 2002 believe in and have benefitted economically from historic preservation and the National Register.

In 1993, the University of Rhode Island calculated that one dollar of Historic Preservation Fund expenditure generated $63 dollars of investment.[3] Ten years later, the University of Florida and Rutgers University demonstrated that in Florida historic preservation created more than 123,000 jobs during 2002, spending on historic preservation activities generated more than $657 million in state and local

[3] University of Rhode Island Intergovernmental Analysis Program, Economic Effects of the Rhode Island Historical Preservation Commission Program Expenditures from 1971 to 1993.

taxes in 2000, and, tourists who visited Florida's historic sites spent more than $3.7 billion. The total annual impact of historic preservation in Florida is $4.2 billion.[4]

In Colorado, the dollar value of Federal investment tax credit rehabilitation projects certified in 1999 was $28,265,017 more than Georgia's $24,993,209 but not as much as Texas' $89,622,748. Historic building rehabilitation creates 32 new jobs per $1 million of direct impact, where as the figure for computer and data processing is 31, trucking is 30, manufacturing semiconductors is 20 and mining for petroleum and natural gas is 12. Heritage tourism in Colorado generated $1.4 billion in direct tourist expenditures, generated $1.0 billion in total household earnings and 55,300 jobs. After Denver's LoDo became a historic district the number of housing units increased by 1,260%, the average rental cost per square foot increased from $7 to $20/$30, and the parking meter revenues increased from $141,200 in 1989 to $1,497,070 in 2000. Interestingly, the Colorado study looked closely at two residential historic districts, Potter Highlands in Denver and Fort Collins Midtown District and found that while quality of life and property values were increasing, the economic mix of the residents did not change dramatically.[5]

2. Historic preservation celebrates our history

In addition to being good for the economy, the historic preservation program also boasts successes in helping owners and residents seek recognition for the historic places where they live and work through the National Register nomination process. Nationally, in 2002, the Keeper of the National Register (Department of the Interior, National Park Service) made 1456 listings which include a total of 40,141 individual properties (one National Register historic district contains multiple individual, historic properties).

3. Historic preservation partners in local governments

The national historic preservation program has also "sold" well with local governments who have sought the Secretary of the Interior's designation as Certified Local Governments, formal partners with the SHPOs. In 2002, 58 city and county governments decided to enact a historic preservation ordinance and establish a historic preservation commission. As a CLG, the local government is eligible to apply for passthrough funding (10% of the State's Historic Preservation Fund allocation) from the SHPOs. In total, 1,384 local governments have opted to become Certified Local Governments. Each State establishes its own criteria for certification which allows for variation to reflect State by state differences.

4. Historic preservation is a "bargain" for the Federal government

Finally, the national historic preservation program is a great value for the Federal investment—States pay half the cost.

D. Historic Preservation Needs

The authorizing committees of the Congress have established a well-designed vehicle to deliver the national historic preservation program. Unfortunately, Administrations and Congresses have failed to provide the funding—the gas—necessary for the vehicle to operate.[6] The under funding of the national preservation program has several implications.

1. Where are the Nation's historic places?

The survey of historic sites across America is not finished. The nation lacks the base line data about where historic places are located. This lack of basic information makes it difficult to evaluate comprehensively the significance of an individual property. Further, without full information on historic places, Federal agencies planning projects have no alternative but to conduct ad hoc historic site surveys for the potential impact area. If the inventory were complete and the information readily available by computer, Federal agency planning would be substantially facilitated.

---

[4] Center for Governmental Responsibility, University of Florida Levin College of Law, and Center for Urban Policy Research, Rutgers University, Executive Summary Economic Impacts of Historic Preservation in Florida. The foundation of the activities analyzed in the University of Florida report is the National Register process administered by the Florida State Historic Preservation Officer and the 1400 National Register listings (cumulative) and the over 135,000 historic structures and archeological sites in the Florida Master Site File inventory of historic sites.

[5] Clarion Associates of Colorado, LLC, Economic Benefits of Historic Preservation in Colorado, Denver, January 2002.

[6] Susan West Montgomery, "The Historic Preservation Fund and Why it Matters," Forum News, January/February 2003. This article outlines the history of the Historic Preservation Fund, how SHPOs match it and use it, and the effects of appropriations shortfalls.

Agencies would have the historic property information on hand at the earliest stages of project planning.

2. Lack of restoration grants

Second, two decades of "bare bones" funding have eliminated SHPOs ability to offer restoration matching grants to help restore threatened National Register properties. In the 1970's the State Historic Preservation Officers used half of their annual allocation to help owners restore National Register properties. These matching grants helped owners restore significant places and insured that state-of-the-art construction techniques were used. Further, the SHPOs' HPF grants were usually a small percentage of the total project cost. The Federal funds were a catalyst for a larger private investment as well as a commitment from the owner to insure future maintenance. SHPOs made many small grants stretching the Federal dollars further. Those financial incentives need to be reinstated by increased appropriations.

3. Federal costs transferred to the private sector

Third, continued reductions of Historic Preservation Fund appropriations to State Historic Preservation Offices is adversely affecting the private sector, specifically applicants for Federal assistance. If the SHPO comment process is a funnel, ongoing reductions have constricted that funnel opening slowing project response times from a stream to a trickle. North Carolina has kept records of the effect of Federal budget cuts on response times. With fewer resources from the HPF available and an increasing work load, response times have doubled, not only in consultation in the Section 106 process but also in response to private sector requests related to National Register nominations and rehabilitation tax credits.

E. The National Register and Private Property Owners

The fundamental principle of the National Register and its implementation by SHPOs is cooperation and respect for and with private property owners.

The National Historic Preservation Act begins with the National Register. This is the Secretary of the Interior's list of America's historic properties. In the past 35 years more than 75,000 nominations have been listed on the National Register. Those listings represent over 1,000,000 private property owners: one nomination may cover a historic district with multiple owners. In Fiscal Year 2002, 1456 nominations were listed. In the last ten years less than one per cent of the total nominations submitted were the subject of owner objections.

National Register listing occurs only after notifying the private property owner and after a careful review of the background research on and the significance of the property. National Register listing conveys the honor of the Secretary's recognition, eligibility for Federal benefits matching restoration grants (when sufficient funds are available) and for the 20% rehabilitation tax credit for work on commercial property, and consideration if a Federal project might affect the property.

Listing places no restrictions on private property owners. Private owners may make any changes they wish to their property and may even demolish or destroy National Register listed places. (Subject, of course, to any locally enacted laws and restrictions.) Listing places controls only on the actions of the Federal Government—the Federal Government must consider the impacts of its actions on National Register listed and eligible property and look for ways to minimize any adverse effects.

SHPOs carry out the National Register nomination process following the Act and the Interior regulations (36 CFR Part 60). The regulations are clear on the role of private property owners in the nomination process. Property owners are notified about nominations. Property owners have the right to file an objection directly with the Keeper of the National Register who is a Federal employee of the National Park Service. In addition, the Federal regulations set forth a uniform nomination process that all SHPOs must follow. The process offers little administrative discretion and requires that every nomination be evaluated and approved by an independent expert review board in addition to approval by the SHPO. Owners may appeal a SHPO's decision to the Keeper. Finally, the process provides Federal oversight of the State's nomination process; nominations are subject to substantiative and procedural review by the Keeper.

Most nominations come from property owners seeking the national recognition. Notice is provided to all owners prior to consideration of the nomination. Many States, for example, Georgia, Michigan, Ohio and Tennessee, have not seen any proposed nominations that lack the owner's knowledge and involvement.

If the owner objects, the property may not be listed on the National Register.

State Historic Preservation Officers often do more than the regulations require to involve private property owners in the nomination process. The New York State Historic Preservation Officer works with local communities in face-to-face meetings and

discussions to insure that owners' questions are fully considered and addressed. In most States—Arizona, Idaho, Maryland, Mississippi and Montana, for example—potential nomination proposals are not pursued if the owner objects.

The National Register program remains popular across the country. Register listing is sought for various reasons. Register listing is needed for developers to receive the 20% rehabilitation tax credit. Individuals and communities look to the National Register as official recognition of the historic significance of their home or neighborhood. Register listing is often an important catalyst for community pride leading to neighborhood revitalization. Convention and visitor bureaus see National Register sites as an attraction for visitors and new businesses. In North Carolina's Triad (Greensboro, High Point, Winston–Salem) the Welcome section of the Guest Guide in hotel rooms prominently displays National Register sites—Mendenhall Plantation, the Greensboro Woolworth's, and the Alamance County Historical Museum—to promote the area.[7]

IV. Conclusion

The National Historic Preservation Act and the National Register have been operational for more than 30 years. Private property rights are respected and protected within its provisions. The National Conference of State Historic Preservation Officers offers to work with the Chairman and the Committee, private property owners, Federal preservation partners, and private sector partners on improving the Nation's historic preservation program in a way that respects the needs of this generation and bequeaths a proud legacy of America's heritage to the future.

Mr. RADANOVICH. Next is Mr. Robert Bisno, owner of Lincoln Place Apartments in Venice, California.

Mr. Bisno, welcome to the Committee. We will appreciate your insights here and your testimony. You may begin.

STATEMENT OF ROBERT BISNO, OWNER, LINCOLN PLACE APARTMENTS, VENICE, CALIFORNIA

Mr. BISNO. Thank you, and good afternoon, Mr. Chairman, Committee members.

My experience is different than one which you may have heard from listening to those who spoke before me. I am here today as the owner or major owner of the Lincoln Place Apartments, a large apartment community in Venice, California.

I am here because I believe it is crucial that we protect the importance and the integrity of the National Register process from those who are seeking to exploit it to present or promote their own self-serving agenda.

In my case, that agenda belongs to the tenants of my property who were seeking to block redevelopment so they wouldn't have to move. This agenda had nothing to do with historic preservation. In fact, I actually proposed a plan 2 or 3 years ago that all existing buildings be preserved. The tenants fought that as well, because under the rent stabilization ordinance of Los Angeles I would have been allowed to raise the rents.

I see the abuse of the National Register process as the No. 1 tool today to stop economic development unless you take steps to stop it.

The Lincoln Place Apartments, our project, was built in 1950, using off-the-shelf plans. For the past 9 years, we have gone through the arduous permitting process to allow us to build 144 low- and moderate-income apartments for rent, 50 low- and moderate-income townhomes for sale, and 650 at-market townhomes for sale.

---

[7] Triad Guest Guide 2002–2003,Vol. XII, Raleigh: Lone Wolf Publishing, Inc., 2002, p. 8–9.

Before SHPO got involved, the Los Angeles Planning Department, the Los Angeles Planning Commission, the Los Angeles Cultural Heritage Commission, the Planning Land Use Management Subcommittee of, and the Los Angeles City Council reviewed our project.

Our project was also reviewed by Mr. Robert Chattel, a nationally recognized expert qualified under the Secretary of Interior's professional qualifications.

At each and every stage and in the City Council, that was two times, the national—pardon me, the determination was that our project was not locally significant. Having lost at the local levels, the applicants then identified the National Register as a soft spot that they might exploit, and they filed an application. Bear in mind, we had done nothing.

On February 7th of this year, California SHPO voted to recommend to the Keeper that Lincoln Place be considered as a locally significant resource. They came to their conclusion without verifying claims made in the application. They also failed to even contact the city of Los Angeles for their input, as required by the regulation. And you will recall, as I testified earlier, every single agency within the city of Los Angeles had determined that this was not a locally significant resource. I am being told that the National Register does not have an impact on our property rights. I am living proof that it does. Our rights are being trampled by this process.

Even before SHPO cast its vote, lawyers for the applicant challenged the city's permits, permits they had granted to us in court. The city lined up with us. But our ability to move forward came to a stretching halt. Well, this is a halt of a project which would generate more than $150 million in local goods and services, provide low- and moderate-income living for almost 200 families and market-rate living for 650 families.

To make matters worse, we asked SHPO to write a letter. SHPO did. SHPO wrote a letter stating that our property has been or would shortly be listed on the National Register. Even the Keeper herself could not clear up the confusion created by SHPO, and the City Attorney of Los Angeles still refused to issue our permits.

On April 24th, the Keeper returned the application to SHPO declaring that the application was significantly inadequate. Even though the National Register application has been effectively terminated, our problems continued. Since the application has been terminated, the applicants, the Lincoln Place Tenants Association and those aligned with them, have filed two lawsuits based solely on submission to the National Register.

Those who oppose property rights have carefully designed the system to strangle development activities by the mere filing of an application. Even today, as we speak, the Lincoln Place Tenants Association are asserting in a city procedure that our property is a local resource because of the actions by SHPO and we should be denied demolition permits, which are a condition precedent to our redevelopment.

Mr. Chairman and members, I believe the answer to this is easy. Federal law should not allow being listed on the National Register without a property owner's consent. I am of the belief that 167 of

170 property owners have objected to and have had the properties rubber stamped. I believe it is time to change the law, because private property rights are being impacted, and to the bad.

Mr. RADANOVICH. Thank you.

[The prepared statement of Mr. Bisno follows:]

Statement of Robert Bisno, Owner, Lincoln Place Apartments, Venice, California

Good Morning Mr. Chairman and members.

My name is Bob Bisno, and I'm a principal in the Lincoln Place Apartment Redevelopment Project located in Venice, California.

I'm here today because it's important, that we protect the importance and integrity of the National Register process from those who are seeking to exploit it to promote their own self-serving agenda.

In my case, that agenda belonged to the tenants of my property who were seeking to block the redevelopment of my property so that they would not be obliged to relocate. Their true agenda has nothing to do with historic preservation. Indeed, several years ago I actually proposed a plan to renovate all of the existing buildings that would have preserved them, but the tenants fought and blocked that effort because they were opposed to the increased rents that would have been necessary to make such a program feasible.

Abuse of the National Register process and other "preservation" mechanisms will become the number one tool to stop economic development in the coming decade unless you take immediate steps to stop it.

We purchased Lincoln Place Apartments in 1986, and for the past nine years, we've been through the arduous permitting process to allow us to carry out our redevelopment plan. Our plan includes the construction of 144 low-income apartments without any governmental subsidy, even though the City of Los Angeles does not require affordable housing in new projects.

Our redevelopment process started in 1994 with an Environmental Impact Report that considered the historic preservation arguments made later by the applicants for the National Register.

The Lincoln Place Apartments were built in 1950, basically using off-the-shelf plans made available by the FHA, which had been issuing mortgage insurance for thousands of project nation-wide since 1937.

After a full public hearing, the Planning Department of the City of Los Angeles voted to certify the EIR that found that Lincoln Place was NOT a significant local resource. See Exhibit A (excerpts from City EIR).

The following year, the full City Planning Commission, after a full public hearing and consideration of the same EIR, found that Lincoln Place was NOT a significant local resource.

Dissatisfied with the decision of the City's Planning Department, the applicants then filed an application to the City's Cultural Heritage Commission; a board concerned only with historic preservation, to have Lincoln Place declared a City monument.

The Cultural Heritage Commission independently reviewed the evidence cited by the proponents of the National Register application. They also reviewed the analysis of Robert Chattel, a nationally recognized expert qualified under the Secretary of the Interior's Professional qualifications.

After an extensive review of the facts, the commission determined that Lincoln Place should NOT be designated a Cultural Historic Landmark as it did not represent significant architecture and was a later example of the many projects involving FHA mortgage insurance found in the region.

And just last year, after considering the National Register application filed by the applicants, the Los Angeles City Council reviewed that application and UNANIMOUSLY voted that Lincoln Place was NOT a locally significant resource. See Exhibit B (Findings of City of Los Angeles).

Having lost locally, the applicants then identified the National Register process as a tool they might exploit, and filed an application to have these commonplace structure listed on the National Register of Historic Places. Under current law, anyone can file a National Register application, even if the owner objects.

The preliminary steps in the National Register process are administered by State officials with final decision-making reserved to the Keeper of the Register.

On February 7th of this year, by a vote of 7 to 1, the California State Historical Resources Commission voted to recommend to the Keeper of the National Register that Lincoln Place be considered a "locally significant" resource notwithstanding the

City's repeated findings that Lincoln Place was NOT a significant local resource. Ironically, according to supporters of the application in a published article, attempting to have Lincoln Place designated as a historic site was a last-ditch desperate effort since the applicants had lost everywhere else they had tried. See, e.g., "Sad Story Unfolding in Venice" Santa Monica Mirror, July 11–17, 2001. Mr. Chairman, I ask unanimous consent to submit a copy of this article for the record.

Although those administering the National Register process told us that the application would not have an impact on our property rights, even before the State Commission cast its vote, the City's permits were challenged in court, and after the Commission's vote, the City refused to issue any more permits. Our ability to move forward was instantly stopped.

Moreover, the State Historic Preservation Officer, who had essentially "rubberstamped" the application without any independent review went out of his way to assist those trying to block our activities by writing letters to suggest that the property had been, or would be shortly, listed on the National Register.

The Keeper herself had to intervene to clear up the confusion. On March 28, 2003, the Keeper wrote that neither the February 7, 2003 action of the State Historic Preservation Commission nor the March 3, 2003 transmittal of State Historic Preservation Officer regarding the Petitioners' application constituted a formal "determination of eligibility" for the Lincoln Place Apartments, and that only she could make such an official determination.

However, despite her letter and her intention to clarify the problem created by the State SHPO, the City Attorney still refused to release our permits.

Later, on April 24, 2003, the Keeper of the National Register returned the application to the State Historic Preservation Officer with her findings that the application was significantly inadequate. Basically, the actions of the State Historic Preservation Commission and Officer's recommendations were overturned. See Exhibit C (April 24, 2003 Keeper action).

On May 12, 2003, the State Historic Preservation Officer returned the application in a letter stating that if the applicants wished to persist in their efforts, a wholly new application would be required.

However, even though the National Register application has been effectively terminated, our problems resulting from the National Register application have continued unabated.

As of today, the applicants have filed not one, but two, lawsuits before different courts to block our redevelopment based only on their National Register application.

In terms of personal costs, I have spent over $ 500,000.00 in the past seven months alone just to respond to this application, to respond to the related lawsuits, and to allow my objections to be heard.

Since this soap opera started, I keep hearing some people say that an application for the National Register does not affect a property owner's rights. Moreover, some tell me that I should feel it is an honor to have my property considered for the National Register.

Those are naive and misguided views. The truth is that those who oppose property rights have carefully designed the National Register system so that it can be used to effectively strangle an owner's activities without any express prohibition on the owner's activities being invoked.

I'm living proof that the rights of property owners are trampled in the National Register process, as it currently exists.

That is what has happened, and is continuing to happen to me.

The National Register process needs to be reformed to prevent this type of abuse. The regulations are vague and not understood even by cities like Los Angeles, the second largest city in this country. The evaluation criteria are so subjective as to be non-existent. There is a lack of rigor on the part of professional staff in screening applications. In our case, the SHPO conducted no independent review of the application, and didn't even request that the applicants submit their bibliography so that the SHPO could check that any of the claims made were accurate.

But most of all, properties should not be declared eligible for the National Register if the owner does not request it. If I want my property honored by the National Register, I will myself make the application. On the other hand, if I believe being listed on the National Register is not in my interest as a property owner, I should be left alone.

There are other laws on the books that give the Federal Government the right to preserve property that is a significant historic resource where necessary.

If the Federal Government believes that a property must be preserved, it can buy the property or condemn it. If the Federal Government is unwilling to acquire the property for preservation purposes, it should leave matters to local government and property owners.

Mr. Chairman and members, the solution to this problem is rather an easy one. Federal law having to do with preservation must be changed to require approval of property owners before any application is accepted by any state SHPO. Only then can the Federal Government take pride in knowing that it's protecting private property rights rather than have those right trampled as mine have been.

I thank you Mr. Chairman and this committee for giving me a chance to bring this travesty to your attention and the attention of this Congress.

[NOTE: Attachments to Mr. Bisno's statement have been retained in the Committee's official files.]

Mr. RADANOVICH. I will go ahead and begin. Then we will ask other members if they would like to ask questions.

I want to start out by saying that I am a big fan of the Historic Preservation Act and the work that is done by the societies at the State levels all across the country.

As I mentioned in my opening statement, I think the goal is to find out whether the process that Mr. Bisno has been subject to is indeed an anomaly or is this something that might not happen again or, if it does happen again, is it a threat to the integrity of the process of identifying historic places all across the country. So that is going to be what I would like to find out I think from this hearing.

In my review of Lincoln Place and the application, it seems to me that this was an application that never should have been approved at the State SHPO level. This was clearly—and I may ask someone on the panel, if you are familiar with the application packet, how could they expect something like that that was so poorly done and had so many holes in it could have been possibly approved by a State SHPO director?

Mr. Tiller, are you familiar with the content of that application?

Mr. TILLER. Mr. Chairman, only to the extent that, after it arrived in our office and we reviewed it, as Mr. Bisno related, it was returned by the Keeper of the National Register for a number of substantive purposes, both on procedural error as well as substantive and research errors.

So I concur with Mr. Bisno and with your inquiry. It got to us in a state that it had not be appropriate to go ahead and submit it to the Keeper at that time.

At the moment, it is back in the court of the folks in Sacramento, and Mr. Bisno. We await it. But, right now, we have no issue with this whatsoever.

Mr. RADANOVICH. Again, I may ask the Keeper to come up and comment on this, what was left out of the package. But, given the inadequacy of the package, why was it sent back and why was it not rejected by the Keeper?

Mr. TILLER. It was sent back, and in a form it was rejected. We gave them a long list of the work that had to be done on it. We closed the case on it. So it is, I guess in a term, rejected. If they choose to resubmit it, they can. But they now know all of the work that has to be done on it, both historic research and contextual research, information up-to-date on its current condition; and it is a fairly tall order that we have sent back to them.

So, as I said, the case is closed as far as the Park Service is concerned. It is up to the State of California whether they want to resubmit it again.

Mr. RADANOVICH. There is a difference between sent back and rejected, I would State in Mr. Bisno's defense. Because one would allow—if indeed the application was sent back with a statement of what was missing in the application and what needed to be done in order for the Keeper to hear the case again, that didn't relieve Mr. Bisno of any problems he had with the development of his property.

Where, had it been rejected, the folks at Lincoln Place would have had to start the thing all over again; and there wouldn't have been a cloud over the development process that Mr. Bisno did have. So there is a distinct difference between being sent back and being rejected.

Mr. TILLER. There is, Mr. Chairman. The Keeper of the Register is asked to make a binary choice: It is eligible for the National Register or it is not eligible for the National Register. In sending it back, the Keeper determined and stated, we have insufficient information to make that call one way or another. So it is not rejected. It is only rejected at the time we have enough information to make the call, and then she will make the call on whether it is eligible or not. At this time, we have issued no opinion one way or the other.

Mr. RADANOVICH. I would like to ask if Carol Shull, the Keeper, would come up and comment on the content of that particular application, with the idea of how did the State approve something like it.

Ms. SHULL. Thank you, Mr. Chairman.

Mr. RADANOVICH. Thanks, Carol, for being here.

I would just start out by saying, I know you are familiar with the case, and thanks for being here today.

Carol, would you state your name and title before you comment on the content of the application.

Ms. SHULL. Thank you. I am Carol Shull. I am the Keeper of the National Register of Historic Places for the National Park Service.

Would you prefer to ask me a question or should I comment on our review?

Mr. RADANOVICH. That would be perfect. If you would give us an idea of what was left out and how—I don't want to put words in your mouth, but whether a SHPO should have approved it and send forward a document that was in the condition that it was.

Ms. SHULL. Well, as you know, owners are given an opportunity to comment and local officials and anyone else during the nomination process. We received quite a stack of comments on the nomination, many of them from Mr. Bisno.

We carefully reviewed the nomination, and there were substantial questions raised as to whether or not the nomination had followed all of the appropriate procedures as required by the law and regulations. So there were so many concerns raised in the procedural aspects of the nomination that what we always do in a case like that, in respect to a State, is ask them, when we return something, to review any allegations that there have been irregularities in the process. So we asked the State to look at the comments that had been received during the comment period and whether or not the procedures had been followed.

There were also many comments raised about the substance of the nomination, and we ourselves had comments as we reviewed the nomination.

Our standard procedure is that when we have questions about documentation or questions are raised by commenters or in our own review is that we return the nomination to the State, raising the questions that need to be raised if we do not think the documentation is adequate.

We generally—in fact, don't out and out reject nominations on the first submittal if there are questions that we think that the State, as the nominating authority, should have the opportunity to review because—as a matter of respect to the State and also because the information in the nomination may be what is inadequate, rather than the property itself.

We always return the nomination unless it is very, very clear from the documentation that the property does not meet the criteria. But we had very substantial questions on the adequacy of this nomination; and I think that was clear in the return comments, as well as the procedures that were followed.

Mr. RADANOVICH. Thank you, Mrs. Shull.

With respect to the rest of the Committee, I think if I may just ask one more question, then I will go ahead and pass time to somebody else.

I wanted to get Mr. Bisno to react to Mr. Tiller's comment about the idea of sending back applications to the State and the difference between that and not just rejecting them and how that keeps you in limbo still, with the type of—in progressing with your development.

Can you comment on that for me, Mr. Bisno?

Mr. BISNO. First of all, we would like to thank Mrs. Shull, the Keeper. We think that she has done her job just like she should do the job. We think the procedure is broken, the procedure which allowed the State SHPO, over the objection of the owner, by a 7-to-1 vote to forward to the Federal Government a property that at every step of the way on the local level had not be determined eligible. We think in and of itself that is a reason for the Keeper to reject such an application.

Mr. RADANOVICH. Thank you, Mr. Bisno.

I recognize Mrs. Christensen. Donna.

Mrs. CHRISTENSEN. Thank you, Mr. Chairman.

I guess I would ask my question to Mr. Nau, or I guess the first three panelists, this one question: Could you give the Committee some idea of how common it is for a State or locality to pass laws limiting a private property owner's ability to alter the character of that property during consideration for listing? Is that a common —

Mr. SANDERSON. Let me try that one from the perspective of the State Historic Preservation Officers. I think it is very unusual. There certainly are some local and State jurisdictions around the country that in one way or another tie a State or local program or law to National Register listing. But for that to be held up during the consideration of the National Register nomination is not something that, frankly, I am aware of occurring anywhere, other than the case that has just been described.

Most States and most local jurisdictions that have developed these kinds of programs maintain their own list of historic properties, and even the reliance on National Register listing is a very small fraction of what most States do. I think what we are hearing is quite an unusual situation.

Mrs. CHRISTENSEN. Mr. Bisno, since the application is essentially closed, and I realize you have been—seems like you have been in and out of court a lot. As you said, there is something being filed now. Is that, what is being filed now, related to the application? Because the application is closed. It would seem to me that, that being the case, that that should not be an issue anymore unless they reapplied?

Mr. BISNO. Your question, in my view, points out why this Act is flawed. Everyone in this room would think that, with the application being returned, that that would be the end of it. But it is not. While the city of Los Angeles agrees with us at every little juncture, the Lincoln Place Tenants Association, since the Keeper returned the application—that is since—has filed two lawsuits standing for the proposition that the State SHPO in forwarding the application recognized the local significance. Two times we will have to appear in court to defeat that allegation.

Additionally, today the Lincoln Place Tenants Association and those aligned with them are contesting that the State SHPO's action was an official action and therefore the demolition permits which have previously been granted to us should be withdrawn.

So the problem that we face isn't one that those in this room would see, but we have a matrix which allows those who wish to create mischief to create just that, the type of mischief that stops $150 million from going into the community, that stops low-income housing and that stops market-rate housing.

The solution that we suggest, requiring the property owner to consent to property put on the National Register, shouldn't burden anyone whose motives are pure.

Mrs. CHRISTENSEN. But as far as the Federal legislation is concerned, it is my understanding that as far as the Federal—the Act that we are having this hearing on, if the private property owner objects to the nomination the property cannot be listed on the National Register. So what we have is a State issue or a county or city issue. How would anyone propose that we would fix that in this legislation?

Mr. BISNO. I don't think your assessment is correct. We all agree that the Federal issue shouldn't apply here. However, back in State court in California, using the matrix of this law, the Lincoln Place Tenants Association, again, using this matrix, is contending that the State SHPO has, under Federal law, determined this property to be locally significant. And we don't believe there is a place for that.

With respect to owners consenting, 170 owners in the last 10 years have objected to inclusion on the Federal Register; 167 of those properties, over the owner's objections, have been listed.

That does not speak to thorough consideration of the merits, but, rather, a process that simply puts through the process applications of SHPO.

Finally, we have asked our State SHPO for a letter confirming that no official State action took place, and we still have not received that. We have asked for it better than a month ago.

Mrs. CHRISTENSEN. Well, my time is up. But I am concerned about your last statement, about the 170 objections and 167 being on. But I will withhold my comment until maybe another round. It probably will be answered.

Mr. RADANOVICH. OK. Thank you, Donna.

Too, I think I want to correct something. I think it might have been mentioned that 167 applications were listed. But I think that those were applications that qualified for listing or were made eligible. I think it is a distinction that needs to be made.

Mr. Gibbons, did you have any questions?

Mr. GIBBONS. I do, Mr. Chairman. Thank you very much. And I would address my first question to Mr. Tiller.

Listening to these individuals and the obvious knowledge that the Service must have of the secondary impact of the eligibility process that you have heard about today, has the Service undertaken any effort to remedy or address these problems that—to either Mr. Bisno or others in this process listing them? 167 out of 170 applicants. Has the Service undertaken any activity to address that problem?

Mr. TILLER. Congressman, the short answer is no. The 160-some cases to which we are referring—let me correct the record first, please. None of those has been listed. It was just a finding of eligibility, but none has been listed on the National Register of Historic Places.

Secondly, the larger context of these 160-some findings of eligibility have been made over the last 10 years. Let's understand that in the overall reality that we are talking about 1.2 million properties that are now listed on the National Register of Historic Places. So what we are talking about statistically is a fraction of a fraction of 1 percent of the properties that are now listed on the National Register of Historic Places.

Mr. GIBBONS. I apologize for interrupting you, but my time is very short. I want to get to two major points that I want to make.

If the fact the Service agrees that a property merits eligibility and recognition as a historical place and there is an owner's objection to that listing and there is a secondary effect to that listing and yet the Service believes that it should go forward with the listing regardless of the owner's objection, isn't due process, as you heard earlier, a fundamental right of the property owner and shouldn't the Service then utilize its condemnation authority or some type of condemnation authority and compensation of an owner for the loss of the property right or the validation due to listing if it is objected to by the owner?

Mr. TILLER. Complex question. Again, with respect, Congressman, none of these properties has been listed on the National Register.

Mr. GIBBONS. No. But I am just saying if there were.

Mr. TILLER. I understand, sir.

Secondly, and I think importantly, conferring or listing a property on the National Register of Historic Places in the United

States as we have stated confers no control on behalf of the Federal Government and little or none anywhere else.

I have been in this business 25 years, and the Keeper has I suspect that or maybe a little bit more, also. This is the first time that we have come up with a situation like this throughout 1.2 million properties listed on the Register.

In answer to your question, sir, the fact that a property is listed on the National Register of Historic Places or determined eligible for it conveys—the creation of the National Register was, first and foremost, honorific these 30-some years that it has been in existence.

Secondly, it is viewed as a planning tool to indicate to State and local planners and people in the city there in which it exists that we have an important property here that you should consider as you think about the preservation and long-term effects of the business that you do.

Thirdly, it conveys also and creates an opportunity for it to receive grant or tax projects, as you have heard from Ted Sanderson. There was an never an intent of putting a property on the Register or listing it as significant, that this leads to absolute preservation for all time forward.

There are many ways to preserve. You can document before you demolish it. There is not necessarily an iterative line between on the National Register, and it must be preserved.

The National Park Service, we have 388 units in the National System. The 1.2 million number of properties on the National Register, under no circumstances would we, the Park Service, consider these for condemning and making units of the National Park System. They are strictly there for honorific and planning purposes.

Mr. GIBBONS. Let me ask one final question before my time runs out. And I want to flip the coin.

Because, at Lake Tahoe there is a place called the Dreyfus Estate, Thunderbird Lodge, built in the turn of the century, 20th century, beautiful, magnificent artwork, in the rock construction, listed as a historic place, owned and—sits on property owned by the Forest Service which was transferred to the Forest Service subsequent to the construction of the property.

The estate is still there run by a non-profit for tours. However, the Forest Service indicated that because of the liability it would like to get the property back, and its intent in getting the property back would be to tear down the Dreyfus Estate or the Thunderbird Lodge.

There is nothing in the law which prevents the Federal Government from going in and tearing down a place, even though it is registered as a historic place. So it should not impose a private citizen's right to go in and tear something down simply because it is a historically registered place. Would you agree with that presumption or not?

Mr. TILLER. I agree with that, and nothing in the finding of eligibility in Federal law prevents Mr. Bisno from tearing down the Lincoln Place Apartments. Where he has been snagged is municipal law, not the Federal law.

Mr. GIBBONS. Thank you, Mr. Chairman.

Mr. RADANOVICH. Thank you Mr. Gibbons.

Mr. Udall, Mr. Tom Udall, did you have any questions?

Mr. UDALL OF NEW MEXICO. Thank you, Mr. Chairman.

I wanted to ask Mr. Nau about the activities of his Advisory Council with regard to—there is a recent ruling in the Circuit Court of the District of Columbia called National Mining Association versus John Fowler. Are you familiar with that case?

Mr. NAU. I came in as chairman right in the middle of that, Congressman. I have a little bit of knowledge, which makes me dangerous. Mr. Fowler is here, so he is a little bit more on point.

Mr. UDALL OF NEW MEXICO. Why don't you share with me a little bit of your knowledge as it relates to your Council on that decision?

Mr. NAU. I am serious. I came in right at the absolute end of it. May I refer to Mr. Fowler?

Mr. UDALL OF NEW MEXICO. I don't know if the Chairman wants another witness or not.

Mr. NAU. I think he would be the right person to answer the question, Mr. Chairman.

Mr. RADANOVICH. That would be fine.

Mr. Fowler, if you would state your name and title before you answer the question, that would be fine.

Mr. FOWLER. My name is John Fowler. I am the Executive Director of the Advisory Council on Historic Preservation and the defendant in the case of National Mining Association versus Fowler, which I would note was previously National Mining Association versus Nau, but they gave me the dubious distinction of naming the appellate case for me.

The case goes back to a challenge that was made by the National Mining Association 2 years ago, 3 years ago, to new regulations that were issued by the Advisory Council on Historic Preservation to implement Section 106 of the National Historic Preservation Act.

To state it very simply, the district court dismissed the challenge to the Council regulations on most counts. There were two minor points where they ruled in favor of the Mining Association. The Mining Association appealed on the issue of whether the definition of undertaking, under Section 106 of the National Historic Preservation Act, included permits that are issued by State or local authorities under color of Federal law, such as a permit under the Surface Mining Control and Reclamation Act that is issued by a State under Federal delegation.

The Mining Association, which obviously is very concerned about the application of Section 106 to State-issued mining permits, took that as their one issue on appeal. The appellate court, in a decision that was handed down on April 15th, ruled in favor of the Mining Association, citing a previous case that the full D.C. Court of Appeals had ruled on several years ago. They said they were bound by the precedent of that case and, under that precedent, if there was no direct Federal involvement in an undertaking, Section 106 of the National Historic Preservation Act would not apply.

So that ruling was handed down by a panel of the D.C. Circuit. The period for determining whether a rehearing en banc will be filed has been extended to June 30th. The Council is currently in discussions with the Justice Department regarding the government's position on a petition for rehearing.

Mr. UDALL OF NEW MEXICO. Is it fair to say, Mr. Fowler, that the ruling would impact historic preservation pretty severely?

Mr. FOWLER. The ruling would directly impact the application of Federal protections to such things as permits for surface mining issued under the Service Mining—under SMCRA and several other statutes.

Mr. UDALL OF NEW MEXICO. Mr. Fowler, you and Mr. Nau serve together on the Advisory Council?

Mr. FOWLER. I am the head of the staff. Mr. Nau is the head of the agency appointed by the president.

Mr. UDALL OF NEW MEXICO. Is the Council itself urging the Justice Department to ask for an en banc review by the D.C. Circuit Court or willing to ask for a further Supreme Court review of this?

Mr. FOWLER. I will defer to my Chairman.

Mr. NAU. The answer is yes.

Mr. UDALL OF NEW MEXICO. OK. And the time period is still for June 30th? It has been extended?

Mr. NAU. Yes.

Mr. UDALL OF NEW MEXICO. So your Council is weighing in on this?

Looking at your responsibilities that are laid out in the statute, it seems to me that that is a prudent thing to do; and I would urge you to do that. I hope that you may be successful on this, because it directly impacts my State of New Mexico. It may well impact a lot of the other States of members on this Committee, and obviously ones that aren't on the Committee.

Thank you. I see my time is up.

Mr. RADANOVICH. Mr. Duncan, did you have any questions?

Mr. DUNCAN. Well, I have got a few. I apologize. I was at another hearing, so I didn't get to hear all of the testimony, so I won't have many questions.

But let me ask, can any of the witnesses tell me roughly how many properties are on the National Register at this point?

Mr. TILLER. At the moment, there are a little in excess of 1.2 million properties and 76-some thousand listings.

Mr. DUNCAN. I don't understand the difference between a property and a listing.

Mr. TILLER. In Charleston, South Carolina, the Charleston Historic District is one listing, but it may contain 500 properties. So some of the listings in the National Register are one house, Mt. Vernon, and that is the one. Charleston Historic District may have 500 properties.

Mr. DUNCAN. 1.2 million you say?

Mr. TILLER. Yes, sir. RPTS BRYANDCMN HERZFELD[3 p.m.]

Mr. DUNCAN. And how many requests roughly do you get each year for new listings or new properties?

Mr. TILLER. As I mentioned—Carol, do you off the top of your head remember what last year's listing was?

Mr. RADANOVICH. You are going to need to repeat that for the record.

Mr. TILLER. Mr. Chairman, 1,454 nominations, including 40,141 properties.

Mr. DUNCAN. And what was the first year the list was set up?

Mr. TILLER. The late 1960's. It was authorized in the 1966 act, and I think—well, automatically a lot of the national park properties got added to it, so that came almost automatically in 1966.

Mr. DUNCAN. So the late 1960's, is that what you said?

Mr. TILLER. Yes, sir.

Mr. DUNCAN. What I am getting at, about how many listings did you have each year back in, say, the late 1960's and early 1970's? In other words, what I am wondering about, is this something that is increasing every year, or are we listing or having a lot more properties listed? In other words, if I asked you for the statistics, say, 20 years ago, what would that 1.2 million figure have been 10 years ago or 20 years ago?

Mr. TILLER. Sir, I don't have those trends. I know in recent history it has been fairly constant each year. We certainly can get you that information over the life of the program.

Mr. DUNCAN. I would be interested in seeing that. And I understand, and I didn't get to hear his testimony, but I understand that, Mr. Bisno, that your property—that the Los Angeles City Council or the city of Los Angeles found that your property was not historic, but then later on the State came in and found that it was? Or what was the situation there?

Mr. BISNO. The planning staff, the planning commission, Cultural Heritage, Planning, Land Use Management Subcommittee of, and the City Council of Los Angeles found that we were not locally significant. Acting pursuant to the Federal law, SHPO forwarded our application to the Keeper, and that started a world of problems for us. It has stopped commercial development, has trampled our rights. And Mr. Tiller would suggest that the Federal law didn't snag us, and I just can't agree with that, sir. The city of Los Angeles is on the same side as we are. The Federal law is supposed to be neutral, and the Federal law is not neutral if, over the owner's objection, we are going to be eligible for listing, because that triggers, even if the city is on our side, litigation in the hands of third parties, which suggests the result that we have encountered. And I would suggest that if the Federal legislation is intended not to interfere with property owners' rights, then we can alleviate, ameliorate our problem by simply changing the legislation to have it not be in effect when a property owner objects.

Mr. DUNCAN. Well, it seems to me that if we already have 1.2 million properties on the list now, and if a person is truly willing to more than just pay lip service to a belief in private property, that this process shouldn't be able to be done over the objection of a private property owner. One of the foundation stones of our freedom and our prosperity is private property, and I am sure that everybody here today would say they believe in private property, but you really don't if you believe that this type of thing should be done over the objections of the property owner.

Thank you very much, Mr. Chairman.

Mr. RADANOVICH. Thank you, Mr. Duncan.

Mr. Mark Udall.

Mr. UDALL OF COLORADO. Thank you, Mr. Chairman. I want to recognize the panel. Thank you for taking time out of your day for joining us. It has been very helpful to me to hear this debate and discussion.

As a preface, I would just say that I think we would all agree that the historic preservation program has been very successful across a broad range of cities and towns in America, and that the discussion by Mr. Bisno, about a particular difficult situation. I hope I will have enough time to hear a little bit more from Mr. Bisno.

But I want to just do what I can with Mr. Tiller, to understand that it is the difference between eligibility and listing.

Now, Mr. Tiller, under the Federal law, can a private property be listed on a Federal register if the owner objects?

Mr. TILLER. No, sir, it cannot.

Mr. MARK UDALL. It cannot. And as a matter of Federal law, what is the significance of a listing, and how does that differ from a finding of eligibility for listing?

Mr. TILLER. Congressman, there is actually—there are three things sort of cutting back and forth here. What we call a formal listing on the National Register of Historic Places is when the property owner or a nomination is submitted to the national register, and the form is filled out, and it is located on the map, and there are photographs provided and submitted to and through the State—Governor-appointed State historic preservation office, and then if the review board of the State passes on it, it comes to the Keeper of the National Register of Historic Places, and her staff reviews it for technical sufficiency and also the scholarship. If it passes all of those hurdles, it is entered into the National Register of Historic Places. It becomes officially part of the list.

The second area is within the 106 arena with our colleagues and friends on the advisory council who co-administer this part of the process. In the 106 process, when a Federal agency is undertaking a project anywhere in the United States, the question is asked, are there historic properties in the impact area? And the first question is, are there any on the national register, and that is answered. But then the other question is asked, are there other properties we may not know anything about? And the State and the Federal agencies work to identify those. Those are called opinions on eligibility or sometimes consensus determinations. They do not—they are not listed on the national register, but they are at least determined if there is something that appears to meet national register criteria in the area, and neither the advisory council nor the National Park Service gets involved in this. This is just a finding of fact between the Federal agencies.

The third category is what brings us here today, which is called the determination of eligibility, or the owner object determination of eligibility. In those rare instances, and, as I said, it is less than 1 percent every year of these sorts of activities, there is a citizen that submits a nomination to the Keeper of the national register through that same process I described, but the owner objects to it. And the Keeper nonetheless makes a determination whether he or she believes it is eligible for the register, but it is not listed, and it brings no Federal restrictions on what happens to that. It is, in fact, never listed.

So there are really three types of categories we are talking about here.

Mr. UDALL OF COLORADO. Mr. Bisno, you had some recommendations, and I want to make sure you have a fair hearing here and that we have a chance to review what you suggest. My understanding right now is that, in effect, you have become caught in a web that is more the making of local and State law than it is the Federal law, and that what you are requesting us to do would perhaps be better done at the local or the State level. Do you—would you like to comment on that and edify me further or give me a little more insight into the situation in which you find yourself?

Mr. BISNO. Well, the city of Los Angeles and the Lincoln Place Apartment owners don't have any disagreement, so we are not caught in city law. The city of Los Angeles has consistently taken the position that this property has no historical significance worth protecting. And so I can't really agree that we are caught in city law, because we and the city of L.A. are lined up on the same side.

On the other side is the Lincoln Place Tenants Association, and their position is, they are able to assert this in court, that the starting of this procedure, through SHPO, which is part of the Federal process, and I am not suggesting that this is the right position, but this is the position they are contending—

Mr. UDALL OF COLORADO. Sure.

Mr. BISNO. It has brought our project to a halt, and it has been a detriment to the community down there, but their position is the starting of this procedure, SHPO forwarding the application to the Keeper, is sufficient official action that we should not be given demolition permits or the right to redevelop our property.

Now, if we are only talking about 167 properties over the course of thousands or tens of thousands, it would seem to be a relatively easy loophole for Congress to fix, modifying the current matrix to provide that, over an owner's objection, you just don't get on this list. You don't start the process. That is my suggestion.

Mr. UDALL OF COLORADO. I see my time has expired, but I would say that I understand what you are pointing out. We have had some 99 percent of the application process work out fine for everybody involved. We have the 1 percent that maybe you are in, or an even much smaller percentage of the 1 percent, but that doesn't reduce the headache and the heartache that you have experienced. But we have to be careful, I think, in looking at changing the law that we would have unintended consequences on the 99 percent of the processes that seem to unfold successfully.

So I thank the panel, and I thank the Chairman for his indulgence.

Mr. RADANOVICH. Thank you, Mr. Udall.

Mr. Bishop, did you have any questions?

Mr. BISHOP. No.

Mr. RADANOVICH. None now? Thank you.

I do have a couple of questions that I want to make sure that get asked and into the record here, not the national record, but just a reminder, this is a hearing on the reauthorization of the advisory council.

Mr. Nau, I wanted to ask you to comment on this. You mentioned as one of your recommendations to expand membership by directing the President to designate the heads of three additional

Federal agencies to the Commission. Can you tell me which agencies you think should be added and why?

Mr. NAU. Mr. Chairman, let me take the why first and then come back to the three.

The original intent was to have various agencies sit on the council that have programs that impact historic properties throughout the country. There are four that are Presidentially designated. As we went through working with the Administration and creating the Preserve America Program, it became clear to those of us on the council that there are other departments, other agencies that clearly have an impact on aspects of historic preservation as historic preservation exists today and into the future. There are clearly economic development benefits through heritage tourism and other programs. The only agency that traditionally deals in that arena is obviously the Commerce Department, and particularly the Economic Development Administration.

Secondly, one of the long-term benefits of heritage tourism and preservation is the education of the youth of America and, quite honestly, foreign visitors to the American values. The only place that you can touch American values is in these locations. So obviously, it is the Department of Education and that should be added.

The third is an agency whose programs impact thousands of historic properties all over the country every year—the Department of Housing and Urban Development.

So I don't want to presuppose, this is up to the President to nominate these agencies, but the three that we would recommend to him would be Commerce, Education, and HUD.

Mr. RADANOVICH. Very good. Thank you.

Mr. Nau, I want to get your comment on the issue at hand here with Mr. Bisno. And to lead into that, I understand that the State of New York and, I think, the State of Texas typically do not make eligible, and correct me if I am wrong, any particular property unless if the private property owner objects to it. It seems to me it is decided differently State by State on how these things are handled. Do you think, given what you have heard here, that it would just be a flat-out requirement that every State could not do this, and if so, can you tell me why?

Mr. NAU. Well, you have heard Mr. Tiller identify the three different classifications. I would like to zero in on one, because there is a clear difference between listing and eligibility.

Mr. RADANOVICH. Correct.

Mr. NAU. And the question to me, when I heard of this— and I agree, Mr. Bisno, he has obviously been a victim, or the process has been abused, there is no question, from my perspective—but why would we have a system that would allow an eligibility level without the owner's consent?

Go back to 1966 and why Act this was created in the first place. Take the building of the Interstate Highway System. There were hundreds, if not thousands, of historic properties where these interstates were cutting through. The question became how can the preservation community engage or be engaged in the process when the U.S. Transportation Department does something, or HUD does something? So the system of eligibility simply allows that property, if it is going to be impacted by a Federal undertaking, to come

under the Section 106 process review, as Mr. Tiller said. It does not require owner consent, and as we have all identified in 99 percent of these projects, there is no adverse impact from the eligibility status of the property; it simply allows it to engage a Federal process through the 106. I would say that that is a good outcome.

I also would suggest that there is a gatekeeper issue here from my perspective, and I think from the Council's; the Keeper is a gatekeeper and the SHPO is the gatekeeper, and if there is a disconnect, it is somewhere not at the Federal side of this, it is a disconnect at the—in this particular case it would appear at the State level.

But I would again point out that there is a logical reason for having an eligibility level in here that does not require an owner's consent. If we were to go to that, because there is no adverse effect at the Federal level, I am absolutely convinced of that—if we were to go to that and require owner consent, or at least owner awareness, it would, from an efficiency standpoint, slow down an awful lot of the Section 106 reviews, because in most cases, the owner doesn't need to know that there is a review going on on a 106 basis. In most cases they are ultimately involved anyway, but there is no adverse effect.

So I would point out that there was a reason for it. The reason still exists. We have to figure out how to fix the gatekeeper, and I would say that the Council would love to be part of the process of addressing this particular issue, because Mr. Bisno has clearly shown that there is a break. I don't think it is completely broken, but there is a break in the process in this case. Thank you.

Mr. RADANOVICH. Thank you, Mr. Nau.

A couple of wrap-up questions, I think.

Mr. Tiller, I would like you to comment on this. You mentioned in your testimony that under the National Historic Preservation Act, a property owner is under no obligation to protect the historic property following a determination of eligibility. Thus, a determination of eligibility by the Keeper is not intended to adversely impact a property owner's right. That is correct, isn't it?

Mr. TILLER. Yes, Mr. Chairman.

Mr. RADANOVICH. If the Federal Government is not intending to affect a private property owner's rights by determination of eligibility, what is the point of the Federal Government making such a determination against an owner's wishes?

Mr. TILLER. When this piece of policy was created, when this was written into the law, which was before my time in this business, but my understanding was that the Congress had intended largely three things: one, to create some record of what was there for future generations if the property is demolished or so denatured; second, to create information for local and regional and statewide planning purposes, to put a dot on the map and say, there is something here that we need to pay attention to now and in future generations; and I think third, although of less weight, is if there is a new property owner, that he or she can go ahead and get the property listed and get tax and grant benefits that are offered under the aegis of these SWITA programs. But I know the policy intent at the time was to impose no punitive and no restrictive rights on the—controls on the private property owner.

Mr. RADANOVICH. Thank you, sir.

Mr. Sanderson, I do have a question of you. A determination of eligibility is an official determination that can be made only by the Keeper of the national register; that is correct, is it not? It cannot be made by the SHPO; is that true?

Mr. SANDERSON. That is correct. Actually a determination of eligibility, as I understand it, can be made by the Keeper, by the Secretary of the Interior, or by the Congress itself.

Mr. RADANOVICH. But not by the SHPO.

Mr. SANDERSON. Not by the SHPO.

Mr. RADANOVICH. Do you know why the California SHPO is unwilling to send a letter to Mr. Bisno confirming that the California SHPO had not made a determination for Mr. Bisno's property?

Mr. SANDERSON. I am not aware of that particular situation at all. I am not aware that a request has been made or what action the SHPO may have taken on that. I would note that the SHPO and the State review board are both part of a multi-tier process. We have talked about the national register process this afternoon, and they do have an involvement in that process.

So I think in Rhode Island where I run the preservation program, if I received a request like that, I think I probably would write a letter. I would probably begin that letter by explaining the role of the Keeper and the fact that only the Keeper can make an official Federal determination of eligibility, and then I would probably report on whatever action the State review board had taken, if it had looked at the property simply as a matter of fact, whether they had looked at the property and what conclusions they had reached, and I would probably report on whether I and my professional staff had looked at the property and whether we had developed any professional opinion about its significance or in relation to criteria.

Mr. RADANOVICH. Thank you, Mr. Sanderson. I appreciate that comment.

Mr. Bisno, did you want to react to that?

Mr. BISNO. Mr. Chairman, I would like to comment first to what Mr. Sanderson just said and then to what Mr. Tiller said, and to put on the record that we have asked SHPO in California two or three times as recently as last week to write a letter to us telling us that no official action had been taken. We would find that letter valuable in our litigation against the Lincoln Place Tenants Association. The first request was 3, 4 weeks ago. We have received no letter for whatever reason. The keeper has refused—pardon me, SHPO has refused to write such a letter. It is surprising to us.

Second, the matrix here is not to impact private property rights. That is the overall theory. Federal law allows the government to buy or condemn a property if the Federal Government believes it should be preserved. If the government does not believe the property is sufficiently important to acquire it, it should leave the matter to local government. But in this case SHPO is acting as an agent of the Federal Government. It is not performing an independent State government function, and therein we find the problem that we have arrived at today.

Mr. RADANOVICH. Thank you very much.

Mr. Bisno, if the national register process is not intended to affect your rights, why do you think that the application—that the applicants have fought so hard to make sure that your property is determined eligible?

Mr. BISNO. The actions of the Lincoln Place Tenants Association speak volume as to their view that the national process does affect our rights.

Mr. RADANOVICH. Right. Thank you.

Any other questions, Mr. Duncan or Mr. Bishop?

Ms. CHRISTENSEN. If I could just follow up on that. But it is the States or the city of Los Angeles really that has determined that their—part of their criteria is the eligibility. It is not what we are doing through the Federal law, it is through what Los Angeles does and what they decide. They decided that part of their criteria would be the eligibility, and that is what is creating the problem for you, isn't it?

Mr. BISNO. The current litigation with the Lincoln Place Tenants Association has the city of Los Angeles and our company on the same side, so, no, I do not see this as a dispute with the city of Los Angeles.

Ms. CHRISTENSEN. OK. Who issued the demolition permit?

Mr. BISNO. The city of Los Angeles.

Ms. CHRISTENSEN. But they are refusing to do it based on the eligibility?

Mr. BISNO. No. The Lincoln Place Tenants Association has now filed a proceeding within the city of Los Angeles which has temporarily stopped the demolition permit. The city of Los Angeles in this case will be the arbiter of the third party.

Mr. RADANOVICH. Thank you.

Mr. Nau, in your capacity as chairman of the advisory council, is it within the purview of the advisory council to take up issues like this and make recommendations? The reason I ask that was that there seemed to be some openness to want to work, or at least to review the Bisno situation to see if there were changes that could be made.

Mr. NAU. We would—Mr. Sanderson sits as a member of the council, and we could play, I think, a catalytic role, but we would have no formal role. That is why I wanted to understand the question. But if this came to our attention, we would then be able to carry that back through the particular SHPO office to Mr. Sanderson and his organization, yes.

Mr. RADANOVICH. Is there a way that the Committee could hear back the results of something like that?

Mr. NAU. Certainly. Absolutely.

Mr. RADANOVICH. OK. All right. Well, thank you.

Gentlemen, thank you so much for again taking time out of your day to be here and to discuss this topic. I appreciate your being here and the information you provided.

With that, this hearing is adjourned.

[Whereupon, at 3:30 p.m., the Subcommittee was adjourned.]

○