

12/19/77 [3]

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THE WHITE HOUSE
WASHINGTON

December 19, 1977

Stu Eizenstat

The attached was returned in the President's outbox today and is forwarded to you for appropriate handling. Please notify Interior and CEQ of the President's decision.

Rick Hutcheson

cc: Jim McIntyre

RE: NATIONAL HERITAGE PROGRAM PROPOSAL --
SUMMARY

THE WHITE HOUSE
WASHINGTON

	FOR STAFFING
	FOR INFORMATION
	FROM PRESIDENT'S OUTBOX
	LOG IN/TO PRESIDENT TODAY
	IMMEDIATE TURNAROUND

Stu - pls notify Interior + CEQ of Pres's decisions

ACTION	FYI	
		MONDALE
		COSTANZA
/		EIZENSTAT
		JORDAN
		LIPSHUTZ
		MOORE
		POWELL
		WATSON
/		McINTYRE
		SCHULTZE

	ENROLLED BILL
	AGENCY REPORT
	CAB DECISION
	EXECUTIVE ORDER

Comments due to Carp/Huron within 48 hours; due to Staff Secretary next day

	ARAGON
	BOURNE
	BRZEZINSKI
	BUTLER
	CARP
	H. CARTER
	CLOUGH
	FALLOWS
	FIRST LADY
	HARDEN
	HUTCHESON
	JAGODA
	GAMMILL

	KRAFT
	LINDER
	MITCHELL
	MOE
	PETERSON
	PETTIGREW
	POSTON
	PRESS
	SCHLESINGER
	SCHNEIDERS
	STRAUSS
	VOORDE
	WARREN

THE WHITE HOUSE
WASHINGTON

12/14/77

Mr. President:

No comment from Frank Moore.
CEQ's comments are summarized
in the Eizenstat and OMB memos.

Rick

THE WHITE HOUSE

WASHINGTON

December 13, 1977

*Stu -
J*

MEMORANDUM FOR

THE PRESIDENT

FROM

STU EIZENSTAT
KATHY FLETCHER

Stu

SUBJECT: National Heritage Program Proposal - Summary

The attached lengthy, excellent OMB memorandum describes Secretary Andrus' proposal for a National Heritage Program prepared in response to a directive in your Environmental Message. A summary of the proposed program components is at Tab A. There are several issues presented in the OMB memorandum for your decision. If time permits, we urge that you read that memorandum as well. Our memorandum summarizes the key decisions in the OMB document and presents our views. We have not attempted to condense the arguments made for the various options set out in the OMB memorandum, since they are quite inclusive.

The Interior proposal was developed by people who were involved in the Georgia Heritage Trust, and included a process of extensive public participation. I think it is generally very good. It is designed to promote voluntary preservation actions and to ensure that federal actions are consistent with the goals of the program.

Following are disputed issues:

Issue 1. There are two parts to this issues:

1a. Should the existing Advisory Council on Historic Preservation be expanded to review the effects of federal actions on heritage resources?

Interior proposes that the existing Advisory Council on Historic Preservation be reconstituted to represent both historic and natural preservation expertise. The function of the Council would be to review and advise on proposed federal actions which would affect listed resources, just as the existing Council now reviews actions affecting listed historic resources. OMB would prefer that the

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reviewing functions be carried out in-house by the Heritage agency within Interior. I would recommend that the Advisory Council concept be maintained, but that the federal agency representatives remain ex officio members and that the expanded responsibilities be carried out with minimal additions to the Council and staff. Natural area expertise could be added to the Council by filling public sector vacancies with suitable appointees. OMB's recommendation would involve abolishing the existing Council, which would alienate the historic preservation community. I favor Interior's proposal, because we need the support of these people for the program as a whole to succeed.

Option 1 -- expand functions of existing Council (Interior, Stu, CEQ) 

Option 2 -- abolish existing Council and transfer functions to Interior (OMB)

1b. Should state participation in the program be dependent on detailed, strict state requirements to protect heritage sites or on a more voluntary approach outlined in a State Heritage Plan?

OMB favors a stricter approach with the states; Interior would prefer to encourage voluntary action and not make program participation dependent on commitments which might scare off some states. While I am sympathetic to OMB's concern, I favor Interior's approach. Some states might never be able to pass the requirements OMB favors and involvement would be limited.

Option 1 -- encourage voluntary state protection actions (Interior, Stu)

Option 2 -- require as a condition of participation strict state protections (OMB)

Issue 2. Interior's proposal establishes several degrees of protection for resources of various levels of significance. There are several related issues on this point:

2a. What should be the maximum amount of protection provided to "nationally significant" resources?

Interior proposes to protect identified nationally significant resources against any direct federal action unless "no prudent or feasible alternative" exists. OMB and CEQ would protect against indirect (permits and licenses, for example) as well as direct federal actions.

I favor CEQ's and OMB's recommendation to protect sites against both direct and indirect federal actions. Permits, licenses and other "indirect" federal actions are perhaps our most important handles on actions which might destroy heritage resources.

Option 1 -- protect only against direct federal actions (Interior) _____

Option 2 -- protect against both direct and indirect federal actions (CEQ, OMB, Stu) ✓

2b. Should the maximum type of protection be less stringent than the Interior proposal to find "no feasible or prudent alternative" as a condition of damage?

TVA, Agriculture and the Veterans Administration would prefer a standard that no "reasonable" alternative is available. This may be a distinction without a difference, but OMB and I would recommend the Interior approach because this is a standard with which we have had experience under existing law.

Option 1 -- "no feasible and prudent alternative" finding (Interior, OMB, Stu) ✓

Option 2 -- use less stringent language (Agriculture, TVA, Veterans Administration) _____

2c. When a federal action is proposed which might affect "nationally significant" resources, should the agency proposing the action, the Heritage agency (within Interior) or the expanded Advisory Council, make the finding of "no feasible or prudent" alternative?

Interior feels that the line agency should make this determination. OMB and I agree. CEQ feels that the Advisory Council would be more objective. This is probably true, but I do not feel it is appropriate to give an advisory body actual authority over federal actions. Another option would be for Interior to make the finding. I think that the burden should be on the proposing agencies to do an adequate job of making this finding.

- Option 1 -- line agency makes its own finding (Interior, OMB, Stu)
- Option 2 -- the Advisory Council makes the finding (CEQ)
- Option 3 -- the Interior Department makes the finding

2d. Should the maximum degree of protection be afforded all identified "nationally significant" sites or only those dedicated to preservation by their owners?

Interior's proposal would grant the maximum degree of resource protection only to sites which are voluntarily dedicated to preservation by their owners. CEQ and OMB believe that any identified "nationally significant" resource ought to be given maximum protection, regardless of the commitment of the owner. (The degree of protection granted will depend on your decision on Issue 2a.) I agree with OMB and CEQ's recommendation that all nationally significant resources be given the maximum level of protection, because Interior's proposal would rely too much on the personal commitment of the owner, and important resources might needlessly be lost.

- Option 1 -- give more protection to sites voluntarily dedicated to preservation by their owners (Interior)
- Option 2 -- protect all nationally significant sites (OMB, CEQ, Stu)

Issue 3. Should the historic and natural parts of the program be further merged?

Interior feels that initially, the political support for the program and the ease with which the states can phase into the program will be much greater if there is a separate identity to the historic and natural parts of the program. They would envision working with the states toward future consolidation but that priorities in each state may be skewed unjustifiably toward either natural or historic preservation if some distinction is not maintained. Interior does propose to have a merged Register of Heritage Resources which would combine and rank all of the nationally significant resources from each register, but to have separate Natural and Historic Registers. OMB would prefer to announce that the program elements will be consolidated in three years. Interior favors consolidation but does not want that to be an announced intention at the beginning. I would trust Interior's assessment of the politics of this, and would recommend the Interior proposal, with an understanding that consolidation within three years is the goal.

Option 1 -- maintain separate Register and
funding arrangements for natural
and historic resources
(Interior) _____

Option 2 -- phase in consolidation of
program in 3 years (OMB) _____

Compromise Option -- approve Interior's
option but direct Interior
to ~~work toward~~ consolidation ✓
in 3 years (Stu) _____

Issue 4. Budget: OMB and Interior have reached agreement on all budget elements for the Heritage Program except the matching rate formula for Historic Preservation grants to the states.

To stimulate rapid completion of historic resource inventories, Interior would like to increase the 50-50 matching formula for state grants under the Historic Preservation Fund to 70-30. Legislative authorization exists to make this change. OMB would prefer to keep the rate at 50-50, which would also be consistent with the Land and Water Conservation Fund formula. I agree with the intent of

Interior's proposal to insure that the inventories are carried out as rapidly as possible. It would be important to insure, however, that the increase in matching formula led to an actual increase in state activity rather than to reduced state contributions to the same level of activity. I would therefore recommend that the higher rate be approved for those states where the amount of state money stayed at least equal to state contributions under the 50-50 match.

Option 1 -- increase match to 70-30
(Interior)

Option 2 -- keep level at 50-50 (OMB)

Compromise Option -- approve increase to 70-30 for states where amount of state contribution does not decrease (Stu)

✓ May
Patel - change

Announcement of the Heritage Program

Interior has suggested to us that you may wish to make a personal announcement of the Heritage program. Several options exist. For example, on December 19, the Park Service is celebrating the 200th anniversary of Valley Forge on site in Pennsylvania. The state of Pennsylvania will be presenting a gift of a parcel of land at the site. There are also two large gifts of natural areas which might form the basis of an announcement of the program -- Union Camp is donating a parcel in the Okefenokee Swamp in Georgia, and a large paper company is about to donate a parcel in Maine including 26 miles of the Appalachian Trail. Any one of these could form the basis for a Presidential announcement, if you desire.

Prepare options for Presidential announcement

Prefer release of White House statement only

Prefer Andrus announcement only

Other

✓

OMB MEMORANDUM



EXECUTIVE OFFICE OF THE PRESIDENT

OFFICE OF MANAGEMENT AND BUDGET

WASHINGTON, D.C. 20503

DEC 14 1977

ACTION

MEMORANDUM FOR:

THE PRESIDENT

FROM:

JAMES T. McINTYRE, JR.

A handwritten signature in black ink that reads "James T. McIntyre, Jr." in a cursive style.

Subject:

Department of the Interior's
Proposal to Create a
National Heritage Program

Pursuant to your Environmental Message, the Department of the Interior proposes to create a National Heritage Program. A complete list of actions proposed by Interior is at Tab A. Interior's options paper is at Tab B, along with a summary of the recommendations of Secretary Andrus and others on each option. The OMB recommendations listed are consistent with those in the body of this memorandum.

BACKGROUND/DESCRIPTION

The program is intended to encourage private, local, State, and national efforts to identify and protect natural and historic resources. The program would be made up of two parallel protection systems, natural and historic. Using the existing National Register of Historic Places as a model, a National Register of Natural Places (scenic, geologic, ecologic, wild) would be created and maintained by the Department of the Interior. The program would be given visibility by designating it as the primary mission of a new Heritage Resource and Recreation Service--a combination of the renamed Bureau of Outdoor Recreation with the historic preservation functions of the National Park Service. From \$73 to \$121 million in additional FY 1979 funding is recommended in order to implement the program.

States would be encouraged to inventory natural and historic properties and would apply criteria issued by Interior to nominate sites to both National Registers. Interior would review the nominations and select properties to be added to the Registers. Registered sites would be classified by Interior, through use of another set of criteria, to be of national, regional, or local significance.

The following provisions would apply to all sites on the Registers:

- Eligibility for Federal tax incentives to encourage preservation.
- Eligibility for Federal preservation grant assistance.
- A Federal agency proposing an action which would affect a registered site must allow the renamed and expanded Advisory Council on Historic Preservation to comment on the proposed action prior to its initiation, as the Council currently comments on Federal actions affecting historic areas.
- Agencies would be directed to administer their grant programs so as to protect listed resources.

For those nationally significant Register sites which the owner pledges to preserve, additional protection would be available. These sites could be affected by direct (not licensed or permitted) Federal actions only after the action agency head finds that there is "no feasible and prudent alternative."

Many details of the proposal, particularly the governing criteria, remain to be developed. This memorandum seeks your guidance as to the general nature and several specific elements of the proposal.

ELEMENTS OF AGREEMENT

The following are elements of the proposal on which Interior, OMB, and the Federal agencies are in agreement. We recommend your concurrence with them:

- The criteria for listing sites on the Registers and for determining which sites are of national significance are critical to the whole design and impact of the Heritage Program. However, criteria that would clearly serve to determine what sites are eligible for inclusion and, perhaps more important, what sites are not eligible have not been written.

- ° How strictly these criteria are designed and implemented will determine the number and type of sites involved in the Heritage Program. The number of sites will determine not only the cost of the entire program but also the extent to which planned economic development is restricted in order to avoid affecting the sites. Indeed, the extent to which groups opposing economic development projects can use potential eligibility for heritage status of affected sites to forestall development may well be the most critical potential adverse consequence of the heritage proposal.

- ° The reason criteria have not yet been developed is that it will take eight months to develop them, with appropriate staff work and public participation. To hold the legislative proposal until criteria are developed would, therefore, mean postponing the proposal until the next Congress.

The agencies are, therefore, agreed that:

- (1) legislation will be proposed now that provides for developing criteria later;
- (2) strict criteria will be developed that limit the number of eligible sites and will be exclusive, as well as inclusive;
- (3) the criteria will be subject to interagency review and Presidential approval before promulgation.

- Extension of the National Register concept to natural areas.
- Procedures by which States inventory and nominate properties to the Registers and Interior adds properties to the Registers and determines which possess national significance.
- Federal benefits accrue to owners of registered properties to encourage their preservation. A higher level of protection applies to sites determined to be nationally significant.
- A Federal agency proposing an action which will affect any Register property must afford the opportunity for advisory comment on the proposed action before it is undertaken.
- Some degree of further control over agency actions which may affect nationally significant properties.
- Sites identified by the Heritage Program as nationally significant and threatened shall be of highest priority for land acquisition spending by existing preservation programs (e.g., the National Park Service, the Marine Sanctuaries Program).
- Study additional protection mechanisms.
- Locate the Heritage Program in the renamed and restructured Bureau of Outdoor Recreation of the Department of the Interior.
- As Interior develops additional elements of the Heritage Program, they will be circulated for interagency and Executive Office review prior to their implementation.

ELEMENTS OF DISAGREEMENT

The following elements are those on which OMB or agencies disagree with Interior.

Issue No. 1: What protections should all Register sites receive?

Sites will be listed on the Register after Interior applies criteria to select among those sites nominated by States and Federal agencies. All sites on the Register will receive some degree of protection. The Register sites which are found to be nationally significant will receive additional protection. This issue concerns only the extent of the basic protections-- those which apply to all sites on the Register.

Currently, some Federal tax incentives to encourage preservation apply to all sites on the National Register of Historic Places. Register properties are eligible for Federal preservation grants. Also, Federal agencies proposing an action which would affect a Register site must allow the Advisory Council on Historic Preservation to make advisory comments before the agency can undertake the action.

All agencies are in agreement that these preservation incentives should be extended to the proposed Register of Natural Areas and that additional preservation tools--more tax incentives, revolving funds, etc.-- should be studied. As noted previously, the cost of these measures and their applicability will depend upon the number of sites on the Register and, hence, the criteria for listing.

Subissue No. 1A: Who should review and comment upon Federal agency impacts on registered heritage resources?

The independent Advisory Council on Historic Preservation now issues advisory comments on Federal actions which affect properties on the

National Register of Historic Places. Interior proposes to expand the size and scope of this Council so that it may also review effects on registered natural areas. All Register sites, whether of local, regional, or national significance, will thus be covered.

Option 1. Adopt proposal as submitted.

- Extends existing organizational arrangement and policies.
- Council attempts to be objective. Members and staff attempt to assess the costs and benefits of preserving the site vs. allowing its destruction.
- Many Federal agencies prefer their actions to be judged by the Council rather than the heritage agency, since the Council includes other Federal agencies as members.
- The Council also includes representatives from the general public.

Option 2. OMB recommended. Abolish Council; transfer staff and functions to the Bureau of Outdoor Recreation, which would issue advisory comments on agency effects on all registered heritage resources.

- Supports policy of reducing number of Federal agencies, particularly advisory bodies.
- Procedure is similar to Fish and Wildlife Service review and comment under Fish and Wildlife Coordination Act.
- Judging the merits of a proposed agency action and commenting is a small portion of the work of the Advisory Council. Most

of the work is technical assistance to agencies or others on historic preservation, and this work should appropriately be consolidated with the other Federal historic preservation activities in the new Bureau.

- Bureau of Outdoor Recreation maintains Registers and data files and is best equipped to comment on adverse agency impacts.
- Abolishing the Council would be strongly opposed by most historic preservation advocates.

Subissue No. 1B: Should State and local governments be required to protect sites listed on the Register?

Interior proposes protecting all Register sites against Federal actions, through the advisory comment procedure. State and local government and private actions also may cause loss of Register sites. The preservation authorities available to State and local governments, e.g., zoning, are more extensive, and frequently less costly, than those available to the Federal Government.

The Heritage Program includes benefits to States in the form of Land and Water Conservation Fund and Historic Preservation Fund grants. The availability of these grants could be made contingent upon a State agreeing to protect Register sites in various ways.

Option 1. Adopt proposal as submitted. Require only that States prepare heritage plans for grant eligibility.



- The Heritage Program will rely upon voluntary State efforts to inventory and nominate sites. Federal grants provide the incentive to incur these costs.
- Presidential policy is to simplify Federal grant programs and reduce the requirements attendant to them.
- Interior will encourage, and States will voluntarily adopt, many of the desired preservation policies in a partnership approach.

Option 2. OMB recommended. As a condition for preservation grant eligibility, require States to: (1) protect Register sites against State agency actions; (2) demonstrate good faith efforts to use State regulatory powers to preserve Register sites. □

- Such requirements may influence local governments to adopt similar policies.
- The amount of grant funds to be provided to States and the substantial preservation efforts of the Federal Government warrant equivalent efforts by States.
- Seeks to encourage States not only to protect heritage sites, but also to assure (through zoning, regulation, etc.) that the environment surrounding the heritage sites is managed so as not to detract from the heritage qualities of the sites.
- If these strings are attached to the Federal grants, some States may decide not to participate in the program at all.

Issue No. 2: What additional protections should nationally significant Register sites receive?

Some sites listed on the Register will be classified through criteria to be developed by Interior as being of national significance. A higher degree of protection, added to the protection available to all Register sites, would apply to nationally significant sites.

Subissue No. 2A: What types of actions should nationally significant Register sites be protected against?

Option 1. Adopt proposal as submitted. Protect nationally significant sites against direct (not licensed or permitted) Federal actions which may adversely affect them. ()

- Unclear whether or not the proposal applies to federally assisted actions.
- Direct Federal actions are the easiest to identify and control. Indirect Federal actions are very numerous and often are obscure.
- Protection against direct Federal agency actions would hopefully be emulated by States by passing laws to protect sites against State agency actions.

Option 2. OMB, CEQ recommended. Protect nationally significant sites against all Federal actions, whether direct, assisted, licensed, or permitted. ()

- Indirect Federal actions (such as power plant licenses, dredge and fill permits, etc.) can have as much of a destructive impact on heritage resources as do direct actions.

- Drawing a distinction between direct and indirect Federal actions is, in many cases, extremely difficult.
- Most other Federal planning requirements serving to preserve resources (NEPA, Endangered Species Act, etc.) apply to both direct and indirect Federal actions.

Subissue No. 2B: Under what conditions should Federal agencies be allowed to adversely affect registered, nationally significant heritage resources?

It would be unreasonable to require that, under no circumstances, could a Federal action (or, for that matter, a State, local, or private action) be allowed to proceed if it would adversely affect a nationally significant heritage resource. There must be some point at which the benefits of the proposed Federal action outweigh the likely harm to the heritage resource.

Option 1. Adopt proposal as submitted; OMB recommended. Only if there is a finding of "no feasible and prudent alternative" may a proposed adverse agency action occur.

- "No feasible and prudent alternative" standard is very high; impacts of Federal actions on registered properties would be minimal.
- If Federal projects are not to be unduly hampered by this requirement, it is again imperative that criteria for national significance be tight and the number of nationally significant sites be limited.
- Is consistent with current Department of Transportation process regarding avoiding park lands with transportation projects.

Option 2. Veterans Administration, Tennessee Valley Authority, and Department of Agriculture oppose Option 1. Agencies may affect nationally significant properties, but only after a finding that there is no other reasonable alternative and that all possible planning to minimize adverse effects has been done. ()

- Is a less severe standard to meet than "no feasible and prudent alternative." More likely to result in adverse effects on heritage resources.
- Provides greater discretion to decisionmakers while mandating care in planning.

Subissue No. 2C: Who should make the finding which allows a nationally significant heritage resource to be adversely affected by a Federal agency?

Option 1. Adopt proposal as submitted; OMB recommended. The agency proposing the action would be required to make the finding. ()

- The agency considering the action will best be able to evaluate any alternatives to the action.
- Trusts in the objectivity and good will of the agency head.
- His objectivity can be questioned. Lawsuits may result challenging his determination.
- Is consistent with current Department of Transportation process.

Option 2. CEQ recommended. The finding must be made by the reconstituted Advisory Council on Historic Preservation (or the reconstituted Bureau of Outdoor Recreation).

- Requiring finding to be made by independent body may result in less bias than by allowing finding to be made by action agency head.
- Will result in fewer lawsuits challenging the finding.
- Requires Advisory Council to somehow obtain staff competence to analyze alternatives to proposed agency actions.

Subissue No. 2D: Should added protection for nationally significant sites apply to ALL nationally significant sites or only to SOME nationally significant sites?

Option 1. Adopt proposal as submitted. Bring added protection into play only for those nationally significant Register sites which the owner (public or private) has committed to perpetual preservation.

- Before the Government is willing to bear additional costs in protecting the resource, the owner must commit to the resource's preservation. Otherwise, these costs may be wasted if the owners change their minds about the need for protection.

Option 2. OMB, CEQ recommended. Apply added protection to all nationally significant Register sites, not just to those which are dedicated to preservation by their owners.

NOTE: CEQ raises a related issue: should the "no feasible and prudent alternative" test be applied to federal actions that threaten all registered heritage resources? See p. B-2 of the Andrus memo. CEQ thinks this test should apply to areas of local/regional significance, as well as national.

- Whether an owner is willing to commit to preserving a nationally significant site should not affect the protection the Government affords that site. Federal protection should depend on the qualities of a site, not on how the owner intends to use it.

Issue No. 3: Should the historic and natural programs be merged into one Heritage Program?

Interior's proposal builds on existing grant programs and organizational arrangements. Heritage Program functions would be located in the reconstituted Bureau of Outdoor Recreation, which currently administers the Land and Water Conservation Fund. The office of the National Park Service which oversees historic preservation matters and administers the Historic Preservation Fund would be transferred to the Bureau of Outdoor Recreation. The Land and Water Conservation Fund grant program (modified to permit acquisition of natural areas, as well as recreational land acquisition or facility construction) and the Historic Preservation Fund would provide assistance to States for Heritage Program purposes.

Option 1. Adopt proposal as submitted. ()

- States now prepare historic preservation plans to receive Historic Preservation Fund grants and recreation plans to receive Land and Water Conservation Fund grants. Grant money for natural area protection under the Heritage Program would be added to the LWCF grants. The added funds would not be earmarked for Heritage Program purposes, but all LWCF grants would be available only if States prepare heritage plans in addition to the recreation plans.

- Creates two National Registers--Historic Places and Natural Areas--with two parallel staffs to administer them.

Option 2. OMB recommended. Consolidate all grant programs (recreational, natural, historic) under one fund; require only one comprehensive plan from States as prerequisite for all grants; and create only one National Register of Heritage Resources to list both natural and historic places. Phase this consolidation in over a three-year period. ()

- If the consolidation option is chosen, Interior believes that phase-in period is required. Most States' recreational, natural, and historic programs are managed by separate agencies. Reorganization of State programs to interface with a consolidated Federal program will take time.
- Consolidation reduces State paperwork.
- Consolidation simplifies organizational arrangements, consistent with Presidential objectives for reorganization efforts.
- Some savings in administrative costs are expected to result from consolidation of Federal recreational, natural, and historic staffs. Program expertise in each area would continue to be necessary, however.
- Block grant approach increases State discretion in allocating funds among recreation, natural, and historic purposes.
- Interior believes strongly that a consolidation approach would lose political support for the National Heritage Program proposal. Historic preservation interests, in particular, believe that they would suffer if they had to compete for funds with recreation and natural interests.

- States may dislike grant consolidation since a new funding source is desired for natural area preservation in addition to existing historic preservation and recreation grants.

Issue No. 4: What budgetary resources should be made available for FY 1979?

Interior and OMB have agreed on the following funding and personnel in 1979 for the National Heritage Program:

- Increase Historic Preservation Fund grants to States by \$17 million (above \$28 million allowed in 1979).
- Increase the budget for the Bureau of Outdoor Recreation by \$5.6 million and 50 FTPs to administer the program.
- Increase the budget for the Advisory Council on Historic Preservation by \$0.4 million and 10 FTPs to expand their comment function to natural areas. (Note that, if the Advisory Council is abolished, these resources will be transferred to the Bureau of Outdoor Recreation.) The Advisory Council requested an increase of \$700,000 and 23 FTPs in 1978 and \$1.1 million and 37 FTPs in 1979, and may appeal the lower figures recommended here.
- Federal agencies will be requested to inventory their lands for heritage resources within 5 years (costs \$16 to \$100 million). Budget treatment of these costs is to be determined between the agencies and OMB.

We recommend your concurrence with these items.

Also, additional grant funding for natural area heritage programs through the Land and Water Conservation Fund is being discussed in the context of Interior's FY 1979 budget appeals. Issues here are: the amount of the grants to be added (\$50 million or \$98 million); whether the additional grants will be earmarked for Heritage Program purposes (especially inventories), rather than recreational purposes.

Subissue No. 4A: What should be the Federal matching rate for Historic Preservation Fund grants?

For the purposes of State historic preservation administrative and inventory efforts, the Secretary of the Interior is authorized to increase the matching rate for these grants from the current 50-50 to 70-30.

Option 1. Adopt proposal as submitted. Increase matching rate to 70-30 for historic preservation administrative and inventory efforts.

- To encourage State spending on historic preservation inventories.
- But, State historic preservation administrative expenses will also be eligible for 70-30 grants.
- Historic preservation interests will be disappointed if this authorized step is not taken.
- Matching rate (70-30) for planning grants for historic preservation will differ from the matching rate (50-50 through the LWCF) for planning grants for natural area preservation.

Option 2. OMB recommended. Maintain 50-50 matching rate for Historic Preservation Fund grants for administration and inventories.

- Treats natural and historic programs consistently.
- Would be consistent with the consolidation option under Issue No. 4 above.

- For the same number of Federal dollars, the 50-50 matching rate results in more total dollars being spent for administration and inventory purposes than does the 70-30 matching rate.

Attachments

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for Preservation Purposes**

TAB A

National Heritage Program Proposal

Although non-specific as to program detail, the National Heritage Program proposal includes the following components:

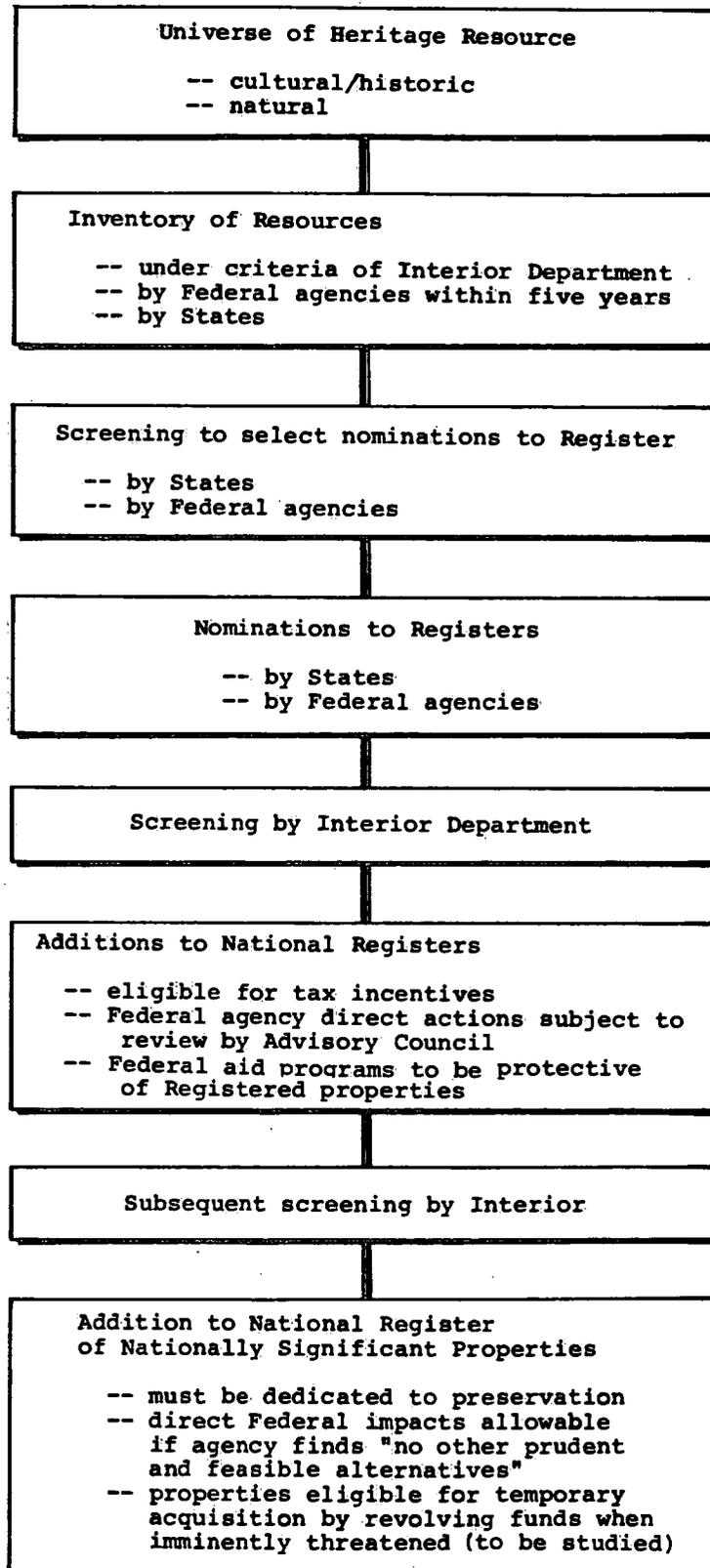
1. Establish a National Register of Natural Places (e.g., scenic, wild, geologic, ecologic) as a counterpart to the existing National Register of Historic Places. *Combine*
2. Reconstitute the Bureau of Outdoor Recreation to maintain both National Registers and administer both program funding sources -- the Historic Preservation Fund and the Land and Water Conservation Fund. Increase the 1979 budget for the Bureau by \$7 million and 90 FTPs.
3. Amend the Land and Water Conservation Fund grant program to permit States to use the grants to acquire natural, as well as recreational, areas. For grant eligibility, require States to prepare heritage resource preservation plans, as well as outdoor recreation plans.
4. Increase the 1979 budget request for the Land and Water Conservation Fund for State grants by \$98 million for the acquisition of natural areas and the development of State natural heritage programs. Funds are conditional upon preparation of a State Heritage Plan.
5. Increase the 1979 budget request for the Historic Preservation Fund by \$17 million to \$45 million, and increase employment by 19 FTPs to administer grants.
6. Increase the Federal matching share for Historic Preservation Fund grants (from 50 to 70 percent) for State program administration and inventories.
7. Extend the authorization for the Historic Preservation Fund from 1981 to 1983, at \$150 million annually.
8. Rename the existing Advisory Council on Historic Preservation and expand it so that it may comment on Federal agency effects on properties on both National Registers. The Council has transmitted a 1978 budget request of \$700,000 and +23 FTPs and a 1979 request of \$1,067,000 and +37 FTPs.

9. Require Federal agencies to afford the expanded Advisory Council an opportunity to comment on their actions which affect properties on the National Registers, expanding present comment requirement which applies only to historic properties.
10. Conduct a study of tax incentives which would be available to owners of properties on the National Registers.
11. Authorize the Department of the Interior to establish criteria for conducting inventories and nominating properties to the Registers and selecting those Register properties which are nationally significant. A nationally significant property would receive protection from direct Federal impacts only if it is dedicated to preservation by the property owner.
12. Direct Federal agencies to inventory and nominate to the Registers properties on their lands within five years, according to criteria issued by the Department of the Interior. Interior would also issue guidelines on how to protect and manage these resources.
13. Direct Federal agencies to administer their assistance programs to protect registered properties.
14. Require Federal agencies to make a finding of "no prudent or feasible alternative" prior to affecting, through direct actions, registered properties which are nationally significant.
15. Authorize the reconstituted Bureau of Outdoor Recreation to:
 - conduct technical assistance programs;
 - recognize heritage communities which have voluntarily acted to protect heritage resources;
 - study the feasibility of a National Bank for Historic Preservation, a National Resource Revolving Fund, and an Endangered Building Revolving Fund. The revolving funds would be used to temporarily acquire imminently threatened properties which are then expected to be turned over to non-profit groups;

- assist the Council on Environmental Quality in developing regulations to protect heritage resources.

16. Request States to analyze the need for an additional source of funds.

NATIONAL HERITAGE TRUST PROPOSAL PROCEDURES



B



THE SECRETARY OF THE INTERIOR
WASHINGTON

OCT 28 1977

MEMORANDUM FOR THE PRESIDENT

FROM: Secretary of the Interior

SUBJECT: National Heritage Program Proposal

In your Environmental Message, you directed me to undertake a "thorough re-examination of existing Federal programs dealing with our natural and historic heritage." You directed me to recommend a "comprehensive Federal program, to be known as the National Heritage Trust, to identify, acquire and protect" our natural and historic resources through effective public, State and Federal action. Attached for your consideration is a decision document carrying out this directive.

The foundation for this program is the initiation of a comprehensive public process to identify and recommend for protection cultural and natural sites of national or regional significance. This activity will be undertaken by citizens throughout the Nation in cooperation with State governments. Once these sites are identified, improved mechanisms are proposed to purchase or otherwise protect these resources.

To ensure continued protection, a two-pronged approach is proposed. First, sites on Federal lands will be identified and protected. Second, for sites on non-Federal lands, stronger and simplified Federal procedures and assistance programs are proposed to ensure protection through State and local efforts.

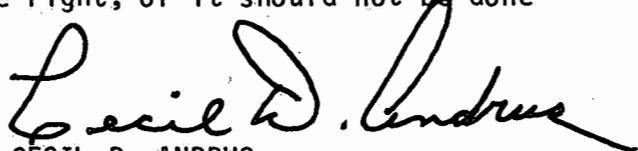
At the Federal level, I have proposed a single focal point for heritage programs and improved tools for protecting resources. Several duplicatory programs would be pulled together into one agency and that agency would be given expanded authority to quickly identify and protect resources. I have recommended broadening the coverage of the existing Land and Water Conservation Fund, requested a study for additional Federal assistance dollars based on identified State needs, and proposed new protection programs only where necessary.

I have recommended that Interior's FY 1979 \$750 million regular Land and Water Conservation Fund budget request now before O M B be adjusted by transferring \$97,879,000 from the Federal programs portion of the Fund to the State programs portion. The deleted Federal projects should be funded through a corresponding increase

authorized by P.L. 95-42. This adjustment will support State heritage initiatives to protect significant and endangered natural and cultural resources that cannot be accommodated by other Federal funds.

It is essential that we build this program on the foundation of citizen participation, with State and Federal agencies providing assistance only when necessary. This approach will ensure a successful advance in protecting the Nation's natural and cultural heritage. The program, if implemented as recommended, will, in five years, identify seventy percent of this Nation's heritage resources. At the same time, various levels of protection commitment will be applied to these resources.

I believe that the program as proposed is a good program, and that it will be a very popular one. Its success, however, will require support. It is a program which must be done right, or it should not be done at all.


CECIL D. ANDRUS

Enclosure

NATIONAL HERITAGE PROGRAM PROPOSAL

DECISION DOCUMENT

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SUMMARY: NATIONAL HERITAGE PROGRAM PROPOSAL

In his Environmental Message of 1977, the President requested the Secretary of the Interior to develop a program to coordinate, expand, and strengthen efforts to protect the cultural and natural heritage of the United States.

In a process designed to provide the widest possible range of participation, the Task Force designated by the Secretary has developed a program which:

- . provides, for the first time, a focal point within the Federal government for those interested in protecting both natural and cultural heritage;
- . combines in one organization those programs of the Department of Interior designed to protect cultural and natural heritage;
 - . a single agency for the coordination of Federal programs which impact on national heritage sites;
 - . a single agency for the coordination and encouragement of State and local efforts to protect both natural and cultural heritage sites;
- . expands and strengthens the tools available to those charged with the responsibility of protecting national heritage sites;
- . ensures and formalizes citizen participation in the recognition and protection of national heritage;
- . documents the need and sets procedures for a comprehensive inventory of national heritage resources; and
- . ensures and formalizes the full partnership between State and Federal governments necessary for effective protection of heritage resources.

The proposed program defines as our national heritage that collection of resources important to Americans because they are significant elements of our diverse history and culture and/or significant aspects of our natural environment.

The Federal heritage agency proposed for this program will be instructed by the President to implement, in full coordination with appropriate State agencies, a nationwide effort to identify resources of potential significance to our national heritage, emphasizing and ensuring public participation in this process.

The Federal heritage agency will develop classification and criteria by which State agencies would review potential heritage resources. Those resources meeting nationally uniform standards of significance will then be recorded in the appropriate (natural or cultural) register maintained by the agency. Resources listed in the registers will be designated according to regional or national significance.

All resources listed will receive protection through:

- . Laws and regulations designed to minimize actions which would result in their destruction or impairment; and
- . Affirmative policies--i.e., grant programs, tax incentives/disincentives--designed to promote their preservation and/or wise utilization.

The Secretary of the Interior will designate resources of national significance. When dedicated by their owners (either governmental or private) to perpetual protection by appropriate covenants and restrictions and by the submission of management standards approved by the Secretary of the Interior, these resources will be protected from direct action of the Federal government which would in any way destroy or impair their significance unless there is no prudent and feasible alternative to such action.

An independent council, composed of all Cabinet members and Presidentially appointed representatives of State and local governments and the private sector will be established to:

- . Review Federal projects that may adversely effect registered heritage resources; and
- . Review Federal policy and programs affecting heritage resources.

The program, if implemented as recommended, will, in five years, identify and ensure the protection of seventy percent of this Nation's heritage resources. It is designed to address resource areas not clearly addressed by existing programs, such as areas of natural diversity. It will provide truly needed direction and coordination for existing programs.

It will provide, for the first time in the history of this Nation, a single, visible, and strong advocate for those concerned with the conservation and protection of a rapidly vanishing heritage.

NATIONAL HERITAGE PROGRAM PROPOSAL

MAJOR ISSUES FOR THE PRESIDENT

A. REGULATORY ACTION

Basic Protection for Heritage Resources

Section 106 of the Historic Preservation Act of 1966 requires the head of any Federal agency responsible for a Federal or Federally assisted project and the head of any Federal agency having authority to license any project to take into account the effect of the project on any historic site included in the National Register of Historic Places. Furthermore, the Advisory Council on Historic Preservation has a reasonable time to comment on the proposed project. This requirement for review by the appropriate Federal agency and opportunity for comment by the Advisory Council has protected many valuable sites. The National Heritage Program (NHP) proposes to continue this authority and extend it to a proposed National Register of Natural Areas. The requirement for review and comment will become the minimum level of protection afforded to any heritage resource on either register regardless of their level of significance.

1. Legislation to create a National Register of Natural Areas and extend the current protection provided by Section 106 of the Historic Preservation Act of 1966 (review by appropriate Federal agency and comment by the Advisory Council) to all registered heritage resources (natural and cultural).

A. CDA Yes

Will insure a minimum level of protection to all registered heritage resources.

B. No

Will not provide an equal commitment of protection to natural heritage resources as currently provided to registered historic places.

2. Who should provide the review and comment?

A. CDA Council on Heritage Resources (See Option 7 and 12).

Implement same level of review provided under the Historic Preservation Act of 1966.

B. Federal heritage agency

Review and comment function does not require work of an independent Council, especially if the Council on Heritage Resources is authorized to make a determination of no prudent or feasible alternative to Federal action impacting significant heritage resources. (See Option 7).

No Prudent or Feasible Alternatives

The extent of protection to be afforded to national heritage resources depends on their level of significance. The strongest and most permanent (but also most costly) is acquisition. However, the NHP proposes an administrative device which would protect nationally significant resources from adverse Federal actions without relying in each case upon Federal acquisition as the ultimate protection.

Section 4(f) of the Department of Transportation Act is the source for this concept. Before the Secretary of Transportation can approve a project which would adversely affect certain lands, the law requires that he must determine that no feasible and prudent alternative to the proposed action exists. NHP proposes to apply this type of protection to our heritage resources.

3. Legislation to require that Federal action which would adversely affect heritage resources can not be approved until a determination of no feasible and prudent alternative is made.

A. CDA Yes

B. No

4. To what kinds of resources should the no feasible and prudent alternative standard apply?

A. CDA Registered areas of national significance only. (OMB, Stu)

These are valuable to the nation as a whole and they deserve a greater commitment for protection by the Federal Government than do resources of less than national significance.

B. All registered resources. (CEQ)

There are only a few resources which are clearly important to the nation as a whole. The distinction between regional and national significance is not always clear. Therefore, any endangered resource ought to be protected.

5. Should the sites proposed for protection be formally dedicated to conservation or preservation.

A. CDA Yes

Before the government is willing to bear the cost of protecting the resource, the owner must be willing to make a formal and long-term commitment to the resource's preservation. Otherwise, these costs may be wasted if the owners change their minds about the need for protection.

B. No

Through various authorities, the Federal government has regulatory authority over actions affecting natural and cultural resources. The Section 10 permits administered by the Corps of Engineers regulate all public and private actions affecting the nation's navigable waters, Section 7 of the Wild and Scenic Rivers Act authorizes the regulation of all Federal action affecting designated or potential components of the Wild and Scenic Rivers System. Should option 4 be for sites of national significance only, then strong consideration should be given to a broad coverage of protection (Federal, State, local and private).

6. To what kind of actions should this type of protection apply?

A. CDA Direct Federal action.

Since this includes projects which the Federal government is actually constructing or financing (such as roads and dams, etc.), they are easiest to control by Federal review.

This would tend to limit the possibility of litigation over "taking" issues and the payment of unnecessary acquisition costs.

B. Indirect Federal action.

This would include private projects which the Federal government must regulate or approve before they can be started. Examples are the award of FPC licenses or the Corps of Engineers permits to develop in navigable waters.

Since the Federal government already reviews or approves these projects because of some previously determined national interest, the application to the review process of the proper criteria for protection of heritage resources is a logical expansion of the government's responsibilities.

C. State and local government actions.

D. Private

If this method is limited to nationally significant and dedicated properties, one can argue that their protection is as much in the national interest as the Corps of Engineers' responsibility to review and approve private projects which affect navigable waters (another public interest).

7. Who should make the feasible and prudent alternative determination?

A. Council on Heritage Resources.

If the heritage agency provides "106" review, the next highest level of protection should be afforded to the Council. This requires the development of a staff capable of evaluating the various projects which may adversely affect a resource and determine whether there are prudent and feasible alternatives.

B. Federal heritage agency.

Would require staff time to develop rather than review determination of prudent and feasible alternatives. Staff expertise is available. May not be appropriate if "106" reviews are conducted by the agency.

C. CDA The agency proposing the action.

Does not provide for independent determination and review of no prudent and feasible alternative.

This is consistent with the Department of Transportation process.

This forces the action agency to be more responsible about their decision. They must incorporate protective mechanisms into their operating procedures rather than assuming that this is another agency's responsibility.

B. FUNDING

The NHP proposes to utilize the Land and Water Conservation Fund (LWCF) and the Historic Preservation Fund (HPF) to ensure the involvement of the State and local governments in identifying and protecting heritage resources rather than relying only on Federal identification and protection.

National Heritage Fund

One of the needs of the NHP is for the Federal Government to assist through the existing State programs, the identification and protection of lands for both natural and cultural resources. Currently, the HPF and the LWCF are the principal funding sources.

The authorized, intend use of the LWCF is for providing recreation opportunity. The Secretary has authority to approve projects that are examples of cultural and natural heritage, and if these areas are necessary to meet priority recreation needs of the State as identified in the SCORP, they would be eligible for Fund assistance. Therefore, to use the Fund effectively, the SCORP should be expanded to include the existing HPF planning requirement and the new parallel objectives for natural heritage.

Since the NHP is a major new program thrust, serious consideration should be given to providing additional financial incentives to ensure its implementation. The NHP proposes the creation of a new grant program - National Heritage Fund (NHF). The funds could be used for natural or cultural heritage projects not otherwise provided for under existing grant programs.

8. How can we ensure that the States are encouraged to implement the heritage program?
- A. Legislation for a new grant program, the National Heritage Fund.
 - B. Clarify or amend the intended use of the LWCF for projects that protect both natural and cultural heritage.
 - C. Consider the need for a new National Heritage Fund based on an evaluation of State needs as expressed by their planning program.
 - D. CDA Options B and C above.

Funding Levels for State Assistance

If Option 8A were chosen, the Department would first need authorizing legislation before appropriations were made. The NHP proposes a first year funding level of \$100 million for the NHF. This need is based on a five year identification goal extrapolated to all 50 States and the territories based on 10 existing State heritage programs.

The LWCF is an alternative which does not require any new authorization. The Secretary could recommend increasing the States' portion of the LWCF and utilizing the authorization provided by P.L. 95-42 to compensate the decrease in Federal acquisition portion.

The other grant program which serves the Heritage Program is the HPF. Its level in FY 1978 was \$45 million. In FY 1979, its authorization is \$100 million.

9. How should we provide additional monies to the Heritage Program in FY 1979.

<u> </u> A. <u> </u>	<u>Program</u>	<u>\$ Million</u>
	NHF	100
	LWCF	944 (This includes \$750 authorized originally and \$194 authorized by P.L. 95-42).
	HPF	100

The NHF requires authorization legislation before appropriation.

It will take longer for the States to become eligible for NHP, therefore, all that money cannot be used in FY 1979.

<u> </u> B. <u>CDA</u>	<u>Program</u>	<u>\$ Million</u>
	LWCF	1042
	HPF	100

The State assistance portion of the LWCF is increased by \$98 million.

To compensate the Federal acquisition level, \$98 million of P.L. 95-42 authority is used.

This is a net increase of \$100 million over the current FY 1979 budget proposals.

This option requires that the LWCF be amended to clarify its use for natural and cultural heritage projects. (See Issue 8). Amendment would clearly identify levels of commitment to each objective either in the Act or through the annual appropriation process.

Waiting for appropriate clarification legislation will not delay the States' preparation of heritage plans because the Heritage Agency can issue interim regulations under the aegis of the LWCF authority.

<u>C.</u>	<u>Program</u>	<u>\$ Millions</u>
	NHF	25
	LWCF	969
	HPF	70

This option assumes it will take the States longer to develop their capability to spend the new funds than Options A and B.

The States' portion of the LWCF is increased \$25 million and the P.L. 95.42 authority is used to compensate the Federal acquisition level by \$25 million.

The HPF is increased by \$25 million over FY 78 level of \$45 million.

Increased Federal Share for Cultural Resource Inventory Grants

In addition to the acquisition and development of historic properties, the HPF monies may be used for survey and planning activities relating to historic preservation. For example, a State could use the funds to inventory a county for possible historic resources. The current law gives the Secretary authority to increase the Federal share of these planning and survey grants from 50% to 70%. The NHP proposes to utilize this upper limit as an added incentive to encourage the States to accelerate their inventories of cultural resources. The cognizance that a site may be a possible heritage area provides significantly more protection than when it was unrecognized. HUD Community Development Block Grants (CDBG) and "701" planning monies provide for survey and inventory work; small communities, however, (population less than 14,000) are ineligible for the CDBG.

10. Should we encourage the States to devote more resources towards the completion of cultural survey and inventory work?

A. CDA Approve the Historic Preservation Fund paying 70% of cultural planning and survey projects.

Because any site on the Register and, especially, nationally significant sites are protected by administrative procedures, identification is very important. Seventy percent funding would increase the rate of identification by fifty percent.

In terms of cost per site, identification and survey work which leads to registration is more effective than the acquisition or rehabilitation of one resource. Historic survey and inventory work for 1000 small communities would cost approximately \$6 million.

- C. Legislation to authorize a \$2 million Small Community Survey and Inventory Grants Program for three years.

This will assist small communities to complete their survey and inventory work and attain the same status as larger communities.

- D. CDA Request the Secretary of HUD to make available and to encourage eligible local governments to utilize a larger portion of their CDBG for survey and inventory work.

This will accelerate and complete the inventory work at an early date.

Funds for Federal Inventories and Survey

The NHP proposes that the President issue a directive ordering the Federal agencies to survey all their properties within five years for possible heritage resources. It is estimated that this will cost approximately \$19 million per year and would involve about 10 principal agencies.

11. How should the funding for this survey work be provided?

- A. All new funds.

We do not know what the trade-offs are if the agencies have to reprogram the funds.

BLM, FWS, and NPS have high budget demands and can not adequately meet all their existing needs now.

- B. Reprogram from existing funds.

The \$19 million estimate is preliminary and the actual work may cost less.

Spread over ten agencies, it represents less than 1% of their available funds.

- C. CDA For Interior agencies, reprogram from existing funds; for other agencies, leave the decision to the agency and OMB.

The first priority for additional funds from the NHP should be the States.

Because of the high priority of the NHP activities, the Department is willing to accommodate fiscal needs within existing resources.

C. CREATION OF A COUNCIL FOR HERITAGE RESOURCES

The NHP proposes the creation of a Council for Heritage Resources composed of the Secretary of the Interior, other cabinet members and other representatives appointed by the President. Its responsibilities could be (1) to resolve conflicts between the Heritage Agency and other Federal agencies, (2) review and coordinate Federal policy and programs affecting heritage resources, and (3) determine whether or not a prudent or feasible alternative to actions adversely affecting a heritage resource exists. This idea is similar to the function of the existing Advisory Council on Historic Preservation which reviews actions which may adversely affect a site on the existing National Register of Historic Places.

12. Legislation to create a Council for Heritage Resources?

A. CDA Yes

An independent agency is necessary to avoid any conflicts of interest and also to bring together the agencies and Presidential appointees in a neutral forum.

B. No

Since the Secretary is responsible for setting the criteria for designation and for establishing management standards for heritage resources, he should be responsible for providing advice or resolving issues on the protection of these resources without an Advisory Council.

The Secretary is capable of managing the Endangered Species Act which entails similar types of protection issues.

13. If there is a Council, what should be its responsibilities concerning the determination of prudent and feasible alternatives (See Option 7)?

A. CDA Advisory only.

B. Make the final determination.

14. How should the Council be organized?

A. CDA One Council for Cultural and Natural Resources.

This may save some costs because of economics of scale.

B. Retain existing Advisory Council on Historic Preservation and create new Council for Natural Heritage.

15. Who should be the Council Chairman?

A. Secretary of the Interior.

B. CDA Presidential Appointee.

D. FINANCIAL ASSISTANCE

Besides the Historic Preservation Fund and the Land and Water Conservation Fund, several Federal financial assistance programs are available for the acquisition and development of heritage properties (Community Development Block Grants, CETA Funds, and EDA Funds).

16. Presidential directive that priority, consideration, and technical assistance be given in the administration of all Federal grants programs available for the acquisition and development of heritage projects.

A. CDA Yes

B. No

17. Presidential directive asking the Secretary of the Interior in conjunction with the Department of Treasury and the Office of Management and Budget to study Federal tax mechanisms that could provide additional incentives/disincentives for the preservation, protection, and enhancement of natural or cultural heritage resources.

A. CDA Yes

This ensures follow-up to preliminary work initiated by the NHP and ensures coordination.

This does not commit the President to preparing a legislative tax proposal.

B. No

NATIONAL HERITAGE PROGRAM PROPOSAL

ISSUES DECIDED BY THE SECRETARY OF THE INTERIOR

So that the proposed Heritage Program may be implemented immediately, the following decisions have been made by the Secretary of the Interior.

A. CREATION OF THE HERITAGE RESOURCE AND RECREATION SERVICE

The Heritage Program is to be managed by a single agency composed of parallel divisions for natural, cultural and recreation resources. Re-creation of an agency will signal a strong commitment to the new program.

This agency will be a reconstitution of the Bureau of Outdoor Recreation under authority existing with the Secretary of the Interior. There will be no diminution of the existing BOR responsibilities regarding recreation.

The responsibilities of the National Natural Landmarks Program and the Office of Archeology and Historic Preservation with its responsibilities, both now within the National Park Service, will be transferred to the new agency.

To administer the new Heritage Program, the new agency will administer the LWCF, the HPF, and any new financial or technical assistance programs within the Heritage Program, maintain the natural and historic registers, develop management standards for nationally significant heritage areas, develop and maintain criteria for and administer the selection of heritage resources, develop and maintain information and data systems, and develop and maintain classification systems for and administer the identification of inventoried heritage resources.

B. GRANT ADMINISTRATION

The Heritage Resource and Recreation Service will administer the two principal grant programs, LWCF and HPF, as the major device to ensure State participation in the Heritage Program.

Single agency administration of the financial assistance programs will improve both Federal and State planning programs. Specification requirements for projects proposed for funding will be simplified.

An Endangered Building Revolving Fund, an authorized use of the Historic Preservation Fund, will be established.

C. NATIONAL ENVIRONMENTAL POLICY ACT

The Heritage Resource and Recreation Service will assist the Council on Environmental Quality to ensure that all Federal agencies fully adhere to procedures developed to implement NEPA. This will be done through the complete and thorough assessment of proposed program actions impacting inventoried natural and cultural resources. Resources not previously identified will be recorded. Together the two agencies will ensure that identification and assessment occurs early in the planning process to allow full public disclosure and review so as not to cause undue and costly delays.

D. HERITAGE COMMUNITIES

The Heritage Resource and Recreation Service will develop criteria for the designation, upon request of local governments, of Heritage Communities. This criteria will assess local actions towards the identification of heritage resources and the development, through the public and private sector, of coordinated resource protection and management plans. The intent of the Heritage Communities designation is to provide recognition to local governments participating in the Heritage Program.

E. ISSUES DEFERRED FOR STUDY

In addition to the above, the Heritage Resource and Recreation Service will complete, within one year, a study of the feasibility and desirability of establishing a National Bank for Historic Preservation and a Natural Resource Revolving Fund.

The National Bank for Historic Preservation would consolidate non-grant funding devices and expedite their availability to private non-profit organizations. This will stimulate protection of cultural resources by the private sector.

The Natural Resources Revolving Fund would, be established within the existing LWCF, be administered by a Federally chartered organization such as the National Park Foundation, and be used to acquire and hold significant natural areas until they can be transferred to to an appropriate public agency.

NATIONAL HERITAGE PROGRAM PROPOSAL

ISSUES CONSIDERED BUT NOT RECOMMENDED
BY THE SECRETARY OF THE INTERIOR

The following two options were presented for consideration by the Task Force. After careful review no action is recommended.

A. MORATORIUM AUTHORITY

Initiate legislation to expand the existing moratorium authority on important archeological sites to significant heritage resources. The purpose of the moratorium would be to allow the Secretary of the Interior time to salvage important data or to determine an appropriate means of protection for resources which may be adversely affected.

B. FINANCIAL ASSISTANCE TO NON-PROFIT ORGANIZATIONS

Initiate legislation to amend the Land and Water Conservation Fund Act to enable States to fund projects sponsored by non-profit organizations. Similar authorization exist within the Historic Preservation Fund.

THE WHITE HOUSE
WASHINGTON

Date: October 28, 1977

*later discuss
with [unclear] for
to discuss it
OMB comments
will be
11/30*

FOR ACTION:

Stu Eizenstat *affiliated*
Frank Moore (Les Francis)
Jack Watson
Jim McIntyre *w/Pro Cults 11/28*
Charles Warren *affiliated*

*Hope that long
contracts update
OT news*

FOR INFORMATION:

The Vice President
Hamilton Jordan
Bob Lipshutz
Jody Powell

FROM: Rick Hutcheson, Staff Secretary

SUBJECT: Andrus memo dated 10/28 re National Heritage Program Proposal

**YOUR RESPONSE MUST BE DELIVERED
TO THE STAFF SECRETARY BY:**
TIME: 9:00 AM
DAY: Friday
DATE: November 11, 1977

*Problem
11/25 from McI
11/28 - 10 w/ Pro Cults*

ACTION REQUESTED:

Your comments
Other: _____

*maybe Nov 18 per
Larry Fleisher
(for agency review)*

STAFF RESPONSE:

I concur.
Please note other comments below:

No comment. *11-2*

*Maybe 11/29
from SE/ Fletcher b/c
probs w/OMB*

~~*w/ Staff*~~

PLEASE ATTACH THIS COPY TO MATERIAL SUBMITTED.

If you have any questions or if you anticipate a delay in submitting the required material, please telephone the Staff Secretary immediately. (Telephone, 7052)

Date: October 28, 1977

MEMORANDUM

cc: Tolbot
Flannery
Shelton

FOR ACTION:

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Frank Moore (Les Francis)
Jack Watson
Jim McIntyre

Charles Warren

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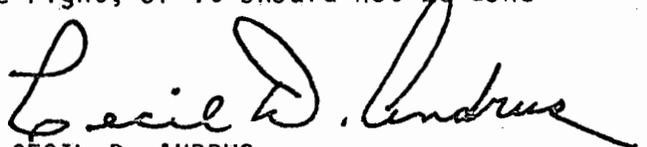
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In his Environmental Message of 1977, the President requested the Secretary of the Interior to develop a program to coordinate, expand, and strengthen efforts to protect the cultural and natural heritage of the United States.

In a process designed to provide the widest possible range of participation, the Task Force designated by the Secretary has developed a program which:

- . provides, for the first time, a focal point within the Federal government for those interested in protecting both natural and cultural heritage;
- . combines in one organization those programs of the Department of Interior designed to protect cultural and natural heritage;
 - . a single agency for the coordination of Federal programs which impact on national heritage sites;
 - . a single agency for the coordination and encouragement of State and local efforts to protect both natural and cultural heritage sites;
- . expands and strengthens the tools available to those charged with the responsibility of protecting national heritage sites;
- . ensures and formalizes citizen participation in the recognition and protection of national heritage;
- . documents the need and sets procedures for a comprehensive inventory of national heritage resources; and
- . ensures and formalizes the full partnership between State and Federal governments necessary for effective protection of heritage resources.

The proposed program defines as our national heritage that collection of resources important to Americans because they are significant elements of our diverse history and culture and/or significant aspects of our natural environment.

The Federal heritage agency proposed for this program will be instructed by the President to implement, in full coordination with appropriate State agencies, a nationwide effort to identify resources of potential significance to our national heritage, emphasizing and ensuring public participation in this process.

The Federal heritage agency will develop classification and criteria by which State agencies would review potential heritage resources. Those resources meeting nationally uniform standards of significance will then be recorded in the appropriate (natural or cultural) register maintained by the agency. Resources listed in the registers will be designated according to regional or national significance.

All resources listed will receive protection through:

- . Laws and regulations designed to minimize actions which would result in their destruction or impairment; and
- . Affirmative policies--i.e., grant programs, tax incentives/disincentives--designed to promote their preservation and/or wise utilization.

The Secretary of the Interior will designate resources of national significance. When dedicated by their owners (either governmental or private) to perpetual protection by appropriate covenants and restrictions and by the submission of management standards approved by the Secretary of the Interior, these resources will be protected from direct action of the Federal government which would in any way destroy or impair their significance unless there is no prudent and feasible alternative to such action.

An independent council, composed of all Cabinet members and Presidentially appointed representatives of State and local governments and the private sector will be established to:

- . Review Federal projects that may adversely effect registered heritage resources; and
- . Review Federal policy and programs affecting heritage resources.

The program, if implemented as recommended, will, in five years, identify and ensure the protection of seventy percent of this Nation's heritage resources. It is designed to address resource areas not clearly addressed by existing programs, such as areas of natural diversity. It will provide truly needed direction and coordination for existing programs.

It will provide, for the first time in the history of this Nation, a single, visible, and strong advocate for those concerned with the conservation and protection of a rapidly vanishing heritage.

NATIONAL HERITAGE PROGRAM PROPOSAL

MAJOR ISSUES FOR THE PRESIDENT

A. REGULATORY ACTION

Basic Protection for Heritage Resources

Section 106 of the Historic Preservation Act of 1966 requires the head of any Federal agency responsible for a Federal or Federally assisted project and the head of any Federal agency having authority to license any project to take into account the effect of the project on any historic site included in the National Register of Historic Places. Furthermore, the Advisory Council on Historic Preservation has a reasonable time to comment on the proposed project. This requirement for review by the appropriate Federal agency and opportunity for comment by the Advisory Council has protected many valuable sites. The National Heritage Program (NHP) proposes to continue this authority and extend it to a proposed National Register of Natural Areas. The requirement for review and comment will become the minimum level of protection afforded to any heritage resource on either register regardless of their level of significance.

1. Legislation to create a National Register of Natural Areas and extend the current protection provided by Section 106 of the Historic Preservation Act of 1966 (review by appropriate Federal agency and comment by the Advisory Council) to all registered heritage resources (natural and cultural).

A. CDA Yes

Will insure a minimum level of protection to all registered heritage resources.

B. No

Will not provide an equal commitment of protection to natural heritage resources as currently provided to registered historic places.

2. Who should provide the review and comment?

A. CDA Council on Heritage Resources (See Option 7 and 12).

Implement same level of review provided under the Historic Preservation Act of 1966.

B. Federal heritage agency

Review and comment function does not require work of an independent Council, especially if the Council on Heritage Resources is authorized to make a determination of no prudent or feasible alternative to Federal action impacting significant heritage resources. (See Option 7).

No Prudent or Feasible Alternatives

The extent of protection to be afforded to national heritage resources depends on their level of significance. The strongest and most permanent (but also most costly) is acquisition. However, the NHP proposes an administrative device which would protect nationally significant resources from adverse Federal actions without relying in each case upon Federal acquisition as the ultimate protection.

Section 4(f) of the Department of Transportation Act is the source for this concept. Before the Secretary of Transportation can approve a project which would adversely affect certain lands, the law requires that he must determine that no feasible and prudent alternative to the proposed action exists. NHP proposes to apply this type of protection to our heritage resources.

3. Legislation to require that Federal action which would adversely affect heritage resources can not be approved until a determination of no feasible and prudent alternative is made.

A. CDA Yes

B. No

4. To what kinds of resources should the no feasible and prudent alternative standard apply?

A. CDA Registered areas of national significance only.

These are valuable to the nation as a whole and they deserve a greater commitment for protection by the Federal Government than do resources of less than national significance.

B. All registered resources.

There are only a few resources which are clearly important to the nation as a whole. The distinction between regional and national significance is not always clear. Therefore, any endangered resource ought to be protected.

5. Should the sites proposed for protection be formally dedicated to conservation or preservation.

A. CDA Yes

Before the government is willing to bear the cost of protecting the resource, the owner must be willing to make a formal and long-term commitment to the resource's preservation. Otherwise, these costs may be wasted if the owners change their minds about the need for protection.

B. No

Through various authorities, the Federal government has regulatory authority over actions affecting natural and cultural resources. The Section 10 permits administered by the Corps of Engineers regulate all public and private actions affecting the nation's navigable waters, Section 7 of the Wild and Scenic Rivers Act authorizes the regulation of all Federal action affecting designated or potential components of the Wild and Scenic Rivers System. Should option 4 be for sites of national significance only, then strong consideration should be given to a broad coverage of protection (Federal, State, local and private).

6. To what kind of actions should this type of protection apply?

A. CDA Direct Federal action.

Since this includes projects which the Federal government is actually constructing or financing (such as roads and dams, etc.), they are easiest to control by Federal review.

This would tend to limit the possibility of litigation over "taking" issues and the payment of unnecessary acquisition costs.

B. Indirect Federal action.

This would include private projects which the Federal government must regulate or approve before they can be started. Examples are the award of FPC licenses or the Corps of Engineers permits to develop in navigable waters.

Since the Federal government already reviews or approves these projects because of some previously determined national interest, the application to the review process of the proper criteria for protection of heritage resources is a logical expansion of the government's responsibilities.

C. State and local government actions.

D. Private

If this method is limited to nationally significant and dedicated properties, one can argue that their protection is as much in the national interest as the Corps of Engineers' responsibility to review and approve private projects which affect navigable waters (another public interest).

7. Who should make the feasible and prudent alternative determination?

 A. Council on Heritage Resources.

If the heritage agency provides "106" review, the next highest level of protection should be afforded to the Council. This requires the development of a staff capable of evaluating the various projects which may adversely affect a resource and determine whether there are prudent and feasible alternatives.

 B. Federal heritage agency.

Would require staff time to develop rather than review determination of prudent and feasible alternatives. Staff expertise is available. May not be appropriate if "106" reviews are conducted by the agency.

 C. CDA The agency proposing the action.

Does not provide for independent determination and review of no prudent and feasible alternative.

This is consistent with the Department of Transportation process.

This forces the action agency to be more responsible about their decision. They must incorporate protective mechanisms into their operating procedures rather than assuming that this is another agency's responsibility.

B. FUNDING

The NHP proposes to utilize the Land and Water Conservation Fund (LWCF) and the Historic Preservation Fund (HPF) to ensure the involvement of the State and local governments in identifying and protecting heritage resources rather than relying only on Federal identification and protection.

National Heritage Fund

One of the needs of the NHP is for the Federal Government to assist through the existing State programs, the identification and protection of lands for both natural and cultural resources. Currently, the HPF and the LWCF are the principal funding sources.

The authorized, intend use of the LWCF is for providing recreation opportunity. The Secretary has authority to approve projects that are examples of cultural and natural heritage, and if these areas are necessary to meet priority recreation needs of the State as identified in the SCORP, they would be eligible for fund assistance. Therefore, to use the Fund effectively, the SCORP should be expanded to include the existing HPF planning requirement and the new parallel objectives for natural heritage.

Since the NHP is a major new program thrust, serious consideration should be given to providing additional financial incentives to ensure its implementation. The NHP proposes the creation of a new grant program - National Heritage Fund (MHF). The funds could be used for natural or cultural heritage projects not otherwise provided for under existing grant programs.

8. How can we ensure that the States are encouraged to implement the heritage program?

- A. Legislation for a new grant program, the National Heritage Fund.
- B. Clarify or amend the intended use of the LWCF for projects that protect both natural and cultural heritage.
- C. Consider the need for a new National Heritage Fund based on an evaluation of State needs as expressed by their planning program.
- D. CDA Options B and C above.

Funding Levels for State Assistance

If Option 8A were chosen, the Department would first need authorizing legislation before appropriations were made. The NHP proposes a first year funding level of \$100 million for the MHF. This need is based on a five year identification goal extrapolated to all 50 States and the territories based on 10 existing State heritage programs

The LWCF is an alternative which does not require any new authorization. The Secretary could recommend increasing the States' portion of the LWCF and utilizing the authorization provided by P.L. 95-42 to compensate the decrease in Federal acquisition portion.

The other grant program which serves the Heritage Program is the HPF. Its level in FY 1978 was \$45 million. In FY 1979, its authorization is \$100 million.

9. How should we provide additional monies to the Heritage Program in FY 1979.

<u>A.</u>	<u>Program</u>	<u>\$ Million</u>
	NHF	100
	LWCF	944 (This includes \$750 authorized originally and \$194 authorized by P.L. 95-42).
	HPF	100

The NHF requires authorization legislation before appropriation.

It will take longer for the States to become eligible for NHP, therefore, all that money cannot be used in FY 1979.

<u>B.</u>	<u>CDA Program</u>	<u>\$ Million</u>
	LWCF	1042
	HPF	100

The State assistance portion of the LWCF is increased by \$98 million.

To compensate the Federal acquisition level, \$98 million of P.L. 95-42 authority is used.

This is a net increase of \$100 million over the current FY 1979 budget proposals.

This option requires that the LWCF be amended to clarify its use for natural and cultural heritage projects. (See Issue 8). Amendment would clearly identify levels of commitment to each objective either in the Act or through the annual appropriation process.

Waiting for appropriate clarification legislation will not delay the States' preparation of heritage plans because the Heritage Agency can issue interim regulations under the aegis of the LWCF authority.

<u>C.</u>	<u>Program</u>	<u>\$ Millions</u>
	NHF	25
	LWCF	969
	HPF	70

This option assumes it will take the States longer to develop their capability to spend the new funds than Options A and B.

The States' portion of the LWCF is increased \$25 million and the P.L. 95.42 authority is used to compensate the Federal acquisition level by \$25 million.

The HPF is increased by \$25 million over FY 78 level of \$45 million.

Increased Federal Share for Cultural Resource Inventory Grants

In addition to the acquisition and development of historic properties, the HPF monies may be used for survey and planning activities relating to historic preservation. For example, a State could use the funds to inventory a county for possible historic resources. The current law gives the Secretary authority to increase the Federal share of these planning and survey grants from 50% to 70%. The NHP proposes to utilize this upper limit as an added incentive to encourage the States to accelerate their inventories of cultural resources. The cognizance that a site may be a possible heritage area provides significantly more protection than when it was unrecognized. HUD Community Development Block Grants (CDBG) and "701" planning monies provide for survey and inventory work; small communities, however, (population less than 14,000) are ineligible for the CDBG.

10. Should we encourage the States to devote more resources towards the completion of cultural survey and inventory work?

A. CDA Approve the Historic Preservation Fund paying 70% of cultural planning and survey projects.

Because any site on the Register and, especially, nationally significant sites are protected by administrative procedures, identification is very important. Seventy percent funding would increase the rate of identification by fifty percent.

In terms of cost per site, identification and survey work which leads to registration is more effective than the acquisition or rehabilitation of one resource. Historic survey and inventory work for 1000 small communities would cost approximately \$6 million.

- C. Legislation to authorize a \$2 million Small Community Survey and Inventory Grants Program for three years.

This will assist small communities to complete their survey and inventory work and attain the same status as larger communities.

- D. CDA Request the Secretary of HUD to make available and to encourage eligible local governments to utilize a larger portion of their CDBG for survey and inventory work.

This will accelerate and complete the inventory work at an early date.

Funds for Federal Inventories and Survey

The NHP proposes that the President issue a directive ordering the Federal agencies to survey all their properties within five years for possible heritage resources. It is estimated that this will cost approximately \$19 million per year and would involve about 10 principal agencies.

11. How should the funding for this survey work be provided?

- A. All new funds.

We do not know what the trade-offs are if the agencies have to reprogram the funds.

BLM, FWS, and NPS have high budget demands and can not adequately meet all their existing needs now.

- B. Reprogram from existing funds.

The \$19 million estimate is preliminary and the actual work may cost less.

Spread over ten agencies, it represents less than 1% of their available funds.

- C. CDA For Interior agencies, reprogram from existing funds; for other agencies, leave the decision to the agency and OMB.

The first priority for additional funds from the NHP should be the States.

Because of the high priority of the NHP activities, the Department is willing to accommodate fiscal needs within existing resources.

C. CREATION OF A COUNCIL FOR HERITAGE RESOURCES

The NHP proposes the creation of a Council for Heritage Resources composed of the Secretary of the Interior, other cabinet members and other representatives appointed by the President. Its responsibilities could be (1) to resolve conflicts between the Heritage Agency and other Federal agencies, (2) review and coordinate Federal policy and programs affecting heritage resources, and (3) determine whether or not a prudent or feasible alternative to actions adversely affecting a heritage resource exists. This idea is similar to the function of the existing Advisory Council on Historic Preservation which reviews actions which may adversely affect a site on the existing National Register of Historic Places.

12. Legislation to create a Council for Heritage Resources?

A. CDA Yes

An independent agency is necessary to avoid any conflicts of interest and also to bring together the agencies and Presidential appointees in a neutral forum.

B. No

Since the Secretary is responsible for setting the criteria for designation and for establishing management standards for heritage resources, he should be responsible for providing advice or resolving issues on the protection of these resources without an Advisory Council.

The Secretary is capable of managing the Endangered Species Act which entails similar types of protection issues.

13. If there is a Council, what should be its responsibilities concerning the determination of prudent and feasible alternatives (See Option 7)?

A. CDA Advisory only.

B. Make the final determination.

14. How should the Council be organized?

A. CDA One Council for Cultural and Natural Resources.

This may save some costs because of economics of scale.

B. Retain existing Advisory Council on Historic Preservation and create new Council for Natural Heritage.

15. Who should be the Council Chairman?

A. Secretary of the Interior.

B. CDA Presidential Appointee.

D. FINANCIAL ASSISTANCE

Besides the Historic Preservation Fund and the Land and Water Conservation Fund, several Federal financial assistance programs are available for the acquisition and development of heritage properties (Community Development Block Grants, CETA Funds, and EDA Funds).

16. Presidential directive that priority, consideration, and technical assistance be given in the administration of all Federal grants programs available for the acquisition and development of heritage projects.

A. CDA Yes

B. No

17. Presidential directive asking the Secretary of the Interior in conjunction with the Department of Treasury and the Office of Management and Budget to study Federal tax mechanisms that could provide additional incentives/disincentives for the preservation, protection, and enhancement of natural or cultural heritage resources.

A. CDA Yes

This ensures follow-up to preliminary work initiated by the NHP and ensures coordination.

This does not commit the President to preparing a legislative tax proposal.

B. No

NATIONAL HERITAGE PROGRAM PROPOSAL

ISSUES DECIDED BY THE SECRETARY OF THE INTERIOR

So that the proposed Heritage Program may be implemented immediately, the following decisions have been made by the Secretary of the Interior.

A. CREATION OF THE HERITAGE RESOURCE AND RECREATION SERVICE

The Heritage Program is to be managed by a single agency composed of parallel divisions for natural, cultural and recreation resources. Re-creation of an agency will signal a strong commitment to the new program.

This agency will be a reconstitution of the Bureau of Outdoor Recreation under authority existing with the Secretary of the Interior. There will be no diminution of the existing BOR responsibilities regarding recreation.

The responsibilities of the National Natural Landmarks Program and the Office of Archeology and Historic Preservation with its responsibilities, both now within the National Park Service, will be transferred to the new agency.

To administer the new Heritage Program, the new agency will administer the LWCF, the HPF, and any new financial or technical assistance programs within the Heritage Program, maintain the natural and historic registers, develop management standards for nationally significant heritage areas, develop and maintain criteria for and administer the selection of heritage resources, develop and maintain information and data systems, and develop and maintain classification systems for and administer the identification of inventoried heritage resources.

B. GRANT ADMINISTRATION

The Heritage Resource and Recreation Service will administer the two principal grant programs, LWCF and HPF, as the major device to ensure State participation in the Heritage Program.

Single agency administration of the financial assistance programs will improve both Federal and State planning programs. Specification requirements for projects proposed for funding will be simplified.

An Endangered Building Revolving Fund, an authorized use of the Historic Preservation Fund, will be established.

C. NATIONAL ENVIRONMENTAL POLICY ACT

The Heritage Resource and Recreation Service will assist the Council on Environmental Quality to ensure that all Federal agencies fully adhere to procedures developed to implement NEPA. This will be done through the complete and thorough assessment of proposed program actions impacting inventoried natural and cultural resources. Resources not previously identified will be recorded. Together the two agencies will ensure that identification and assessment occurs early in the planning process to allow full public disclosure and review so as not to cause undue and costly delays.

D. HERITAGE COMMUNITIES

The Heritage Resource and Recreation Service will develop criteria for the designation, upon request of local governments, of Heritage Communities. This criteria will assess local actions towards the identification of heritage resources and the development, through the public and private sector, of coordinated resource protection and management plans. The intent of the Heritage Communities designation is to provide recognition to local governments participating in the Heritage Program.

E. ISSUES DEFERRED FOR STUDY

In addition to the above, the Heritage Resource and Recreation Service will complete, within one year, a study of the feasibility and desirability of establishing a National Bank for Historic Preservation and a Natural Resource Revolving Fund.

The National Bank for Historic Preservation would consolidate non-grant funding devices and expedite their availability to private non-profit organizations. This will stimulate protection of cultural resources by the private sector.

The Natural Resources Revolving Fund would, be established within the existing LWCF, be administered by a Federally chartered organization such as the National Park Foundation, and be used to acquire and hold significant natural areas until they can be transferred to an appropriate public agency.

NATIONAL HERITAGE PROGRAM PROPOSAL

ISSUES CONSIDERED BUT NOT RECOMMENDED
BY THE SECRETARY OF THE INTERIOR

The following two options were presented for consideration by the Task Force. After careful review no action is recommended.

A. MORATORIUM AUTHORITY

Initiate legislation to expand the existing moratorium authority on important archeological sites to significant heritage resources. The purpose of the moratorium would be to allow the Secretary of the Interior time to salvage important data or to determine an appropriate means of protection for resources which may be adversely affected.

B. FINANCIAL ASSISTANCE TO NON-PROFIT ORGANIZATIONS

Initiate legislation to amend the Land and Water Conservation Fund Act to enable States to fund projects sponsored by non-profit organizations. Similar authorization exist within the Historic Preservation Fund.

Summary of Federal Agencies' Recommendations on
Interior's National Heritage Program Proposal
Decision Document

NOTE: The agencies have seen only Interior's decision document and have not reviewed any other options proposed by OMB or other Federal agencies.

Issue No. 1

Legislation to create a National Register of Natural Areas and to extend review by Advisory Council on Historic Preservation to registered natural areas, as well as historic places.

_____ A. Yes: Secretary Andrus; National Arts Endowment; NASA; DOD; Labor; Fine Arts Commission; HUD; DOT; EPA; CEQ; NRC; VA; HEW

_____ B. No: USDA

_____ (Not listed). Yes, but create only one Register on which both natural areas and historic places would be listed: McIntyre

_____ (Other). Commerce cannot comment without further information; DOT, yes, but should be a limited number of nationally and regionally significant properties; TVA, yes, but this Register protection should be closely coordinated with existing protection programs, such as wilderness, endangered species, etc.

Issue No. 2

Who should review and comment upon Federal actions affecting listed properties?

_____ A. An expanded Advisory Council on Historic Preservation: Secretary Andrus; NASA, DOD; HUD; Labor; National Arts Endowment; EPA; NRC; DOT; VA; TVA; HEW

_____ B. The reconstituted Bureau of Outdoor Recreation: McIntyre

_____ (Not listed). Review should be done jointly by action agency and Council: USDA

_____ (Other). Fine Arts Commission - A, but conflict can result when action agency or Advisory Council votes on its own actions

Issue No. 3

Legislation to require a finding of "no feasible and prudent alternative" before Federal agencies can adversely affect heritage resources.

_____ A. Yes: Secretary Andrus; NASA; DOD; HUD; Labor; Fine Arts Commission; CEQ; EPA; NRC; National Arts Endowment; HEW

_____ B. No: USDA; VA; TVA

_____ (Not listed). Heritage resources determined to be nationally significant should be few, but should receive strict protection from private, local, State, as well as Federal, actions: McIntyre

_____ (Other). DOT, yes, but should only apply to adverse effects on the use of an area, not adverse effects on property which don't impair use of the area

Issue No. 4

To what type of resources should the "no feasible and prudent" standard apply?

_____ A. Nationally significant heritage resources: Secretary Andrus; National Arts Endowment; Fine Arts Commission; NASA; DOD; HUD; Labor; USDA; EPA; NRC; DOT; VA; TVA; HEW

_____ B. All heritage resources on the National Register: CEQ

_____ (Not listed). Heritage resources determined to be nationally significant should receive strict protection from private and public actions: McIntyre

Issue No. 5

Should sites proposed for protection be required to be formally dedicated by their owners to preservation?

_____ A. Yes: Secretary Andrus; NASA; DOD; HUD; Labor; Fine Arts Commission; National Arts Endowment; CEQ; DOC; EPA; NRC; DOT; VA; TVA; HEW

_____ B. No: USDA believes designation should not preclude non-adverse multiple uses

_____ (Not listed). Sites proposed for protection should be nationally significant, independent of whether owner chooses to dedicate it to preservation or not, and such sites should be the list of potential additions to the national preservation systems, e.g., the national parks: McIntyre

Issue No. 6

To what kind of Federal actions should the "no feasible and prudent alternative" standard apply?

_____ A. Direct Federal action: Secretary Andrus; NASA; DOD; HUD; Labor; Fine Arts Commission; National Arts Endowment; NRC; VA; TVA; HEW

_____ B. Indirect and direct Federal action: CEQ; EPA; DOT

_____ (Not listed). Protect nationally significant resources from all adverse affects: McIntyre; USDA

Issue No. 7

Who should make the "no feasible and prudent alternative" determination?

_____ A. The expanded Advisory Council on Historic Preservation: CEQ

_____ B. The agency proposing the action: Secretary Andrus; McIntyre; HUD; NASA; DOD; Labor; National Arts Endowment; Fine Arts Commission; DOC; EPA; NRC; DOT; VA; TVA; HEW

Issue No. 8

How can we insure States are encouraged to implement the heritage program?

- _____ A. Legislation to create a new grant program, the National Heritage Fund: USDA
- _____ B. Amend Land and Water Conservation Fund to allow grants to protect natural and cultural heritage, and study the need for a new Heritage Fund based on an evaluation of State needs: Secretary Andrus; USDA; HUD; NASA; DOD; DOT; Labor; National Arts Endowment; EPA; NRC; HEW
- _____ (Not listed). Require States to protect heritage resources as a prerequisite to receiving Historic Preservation and Land and Water Conservation Fund grants, which should be consolidated into a National Heritage Fund and made available for use by States for protection of recreational, historic, and natural areas: McIntyre
- _____ (Other). Fine Arts Commission: States should prepare comprehensive plan as prerequisite to obtaining grants
- _____ (Other). TVA: Do not believe that sufficient encouragement is provided for State participation; further study needed

Issue No. 9

How should we provide additional money for the program in 1979?

- _____ A. Create a new Heritage Fund: USDA
- _____ B. Increase Land and Water Conservation Fund State grants by \$98 million and budget \$45 million in the Historic Preservation Fund: Secretary Andrus; HUD; NASA; National Arts Endowment; Fine Arts Commission; EPA; NRC; CEQ, if used for acquisition, not development; HEW (note: Secretary Andrus subsequently reduced request for Historic Preservation Fund to \$17 million)

_____ C. Increase Land and Water Conservation Fund State grants by \$25 million, create a \$25 million National Heritage Fund, budget \$70 million in the Historic Preservation Fund: DOC

_____ (Not listed). Provide additional funds to accelerate States' inventories or to buy threatened nationally significant resources-- \$17 million increase to the 1979 allowance for the Historic Preservation Fund, \$50 million increase to the 1979 allowance for the Land and Water Conservation Fund (within three years, consolidate both grants into a National Heritage Fund): McIntyre

Issue No. 10

Should States be encouraged to devote more resources toward the completion of inventories of historic resources?

_____ A. Increase the Federal share of Historic Preservation Fund administrative expenses from 50 percent to 70 percent: Secretary Andrus; HUD; DOD; NASA; Labor; CEQ; Fine Arts Commission; National Arts Endowment; USDA; EPA; NRC; HEW

_____ B. Request HUD to encourage States to use more Community Development Block Grant funds for inventories: Secretary Andrus; USDA

_____ (Not listed). Increase grant funding, with increase to be primarily used for inventory: McIntyre

_____ (Other). TVA: Both options A and B are ineffective; further study needed

Issue No. 11

How should funding of Federal agency inventories of heritage resources on their lands be provided?

_____ A. All new funds: DOD; CEQ; USDA; DOT; TVA

_____ B. For Interior agencies, reprogram from existing funds; for other agencies, leave decision to the agency and OMB: Secretary Andrus; McIntyre; HUD; Labor; National Arts Endowment; Fine Arts Commission; EPA; NRC; VA; HEW

_____ (Other). CEQ - A, but wants Federal agencies to show evidence of progress; NASA feels it has done sufficient inventories; HEW notes that many Federal programs have no money which could be applied to inventories

Issue No. 12

Legislation to create a Council for Heritage Resources (the expanded and renamed Advisory Council on Historic Preservation).

_____ A. Yes: Secretary Andrus; HUD; NASA; DOD; Labor; Fine Arts Commission; DOC; NRC; DOT; National Arts Endowment; TVA; HEW

_____ (Not listed). No, abolish existing Advisory Council on Historic Preservation and transfer staff and comment functions to the reconstituted Bureau of Outdoor Recreation: McIntyre

_____ (Other). USDA: Council shouldn't have agency ties

Issue No. 13

If a Council is created, what should be its role in the determination of feasible and prudent alternatives?

_____ A. Advisory only: Secretary Andrus; HUD; NASA; DOD; Labor; National Arts Endowment; Fine Arts Commission; USDA; CEQ; DOC; NRC; DOT; VA; TVA; HEW

_____ B. Make the final determination: EPA

_____ (Not listed). Action agency head makes determination of no feasible and prudent alternatives, but receives advice from reconstituted Bureau of Outdoor Recreation which would contain staff of abolished Council: McIntyre

Issue No. 14

How should the Council be organized?

_____ A. One Council for cultural and natural resources:
Secretary Andrus; HUD; NASA; DOD; Labor; National
Arts Endowment; Fine Arts Commission; CEQ; USDA;
DOC; EPA; NRC; VA; TVA; HEW

_____ (Not listed). Abolish existing Advisory Council on
Historic Preservation; transfer staff and comment
function to reconstituted Bureau of Outdoor Recreation:
McIntyre

Issue No. 15

Who should be the Council chairman?

_____ Presidential appointee: Secretary Andrus; McIntyre;
HUD; DOD; Labor; Fine Arts Commission; National Arts
Endowment; CEQ; USDA; DOC; EPA; NRC; VA; DOT; TVA;
HEW

Issue No. 16

Presidential directive that Federal grant programs have
as their priority the acquisition and development of
heritage properties.

_____ A. Yes: Secretary Andrus; NASA; DOD; Labor;
National Arts Endowment; Fine Arts
Commission; EPA; NRC; TVA; HEW

_____ (Not listed). Yes, but agencies should prepare
individual guidelines so that their grant programs
can satisfy both their program objectives and those
of heritage resource preservation: McIntyre

Issue No. 17

Presidential directive to Interior, OMB, Treasury to
study further tax incentives for preservation of heritage
resources.

_____ Yes: Secretary Andrus; McIntyre; HUD; TVA; HEW

EXECUTIVE OFFICE OF THE PRESIDENT
COUNCIL ON ENVIRONMENTAL QUALITY
722 JACKSON PLACE, N. W.
WASHINGTON, D. C. 20006

November 17, 1977

MEMORANDUM FOR RICK HUTCHESON
THE WHITE HOUSE

SUBJECT: National Heritage Program Proposal

The Council supports this proposal as an important first step toward development of a new, integrated federal strategy to protect national heritage resources, provided the following conditions are met:

The opening program description needs to define more clearly what areas would be eligible for protection as heritage resources, and what are the recommended strategies to protect them. We understand that cultural heritage resources would include historic sites and buildings but not movable works of art. The natural heritage program should aim to preserve ecological diversity, habitat for endangered species and non-game wildlife, and outstanding wild and scenic areas.

We must give the states a strong incentive to take initiative and participate in the program, while still retaining federal leadership and quality control. The Interior proposal should require that states must do an inventory and submit satisfactory State Heritage programs to acquire and protect natural and cultural resources in order to receive money from the Land and Water Conservation Fund and the Historic Preservation Fund. CEQ strongly supports this requirement, and without this requirement we do not think the program would work. These requirements should apply to the whole state program as a package, rather than to each individual area.

Our comments on the specific policy options listed by Interior are as follows:

We agree with Interior's position on items 1, 3, 5, 7, 10, 16, and 17, and have no comments to make on these.

Item 2

We agree with Interior's position, but are concerned that the five-year deadline not be interpreted to mean that states have five years in which to do nothing before there is any chance that their federal money would be cut. There should be evidence of progress along the way.

*2/20
2/27
final*

Item 4

We recommend that the "no feasible and prudent alternative" test apply to federal actions that threaten all registered heritage resources although we recognize this may be difficult to achieve politically. The heritage program assumes that it is in the national interest to help the states protect areas of great local or regional significance too, not only those of national significance. There is no clear distinction made between regional and national, and there will be only a few areas specifically designated by the Secretary of the Interior as nationally significant. States and localities that feel strongly about a resource should be able to obtain a high degree of protection from adverse federal action. The "feasible and prudent" test is not an absolute prohibition but a flexible, balancing mechanism that can be integrated into the planning of each agency.

**
p 12*

Item 6

We recommend, as even more important than our item 4 recommendation, that the "prudent and feasible alternative" test apply both to direct and indirect federal actions. Indirect federal actions can pose just as great a threat. They would include, for example, the NRC decision to license a nuclear power plant that threatened the integrity of the Indiana Dunes National Lakeshore, or any Corps of Engineers permit for dredge and fill, or any FERC license to build a dam. There is no such distinction in NEPA between direct and indirect actions, and the agencies can readily make this test part of their EIS process, just as DOT already does today. The test should also apply to state and local actions that are using federal funds, again as part of the EIS process.

*3
4-5*

Item 8

We agree with the recommended position but we do not believe that it suffices to insure adequate state implementation of the heritage program. States should be required to prepare,

*to
state
compliance
in
1/15/84*

*in
form*

implement and enforce comprehensive plans to protect their natural and cultural heritage before receiving federal land acquisition grants. Approval of such plans by the federal Heritage Resources Service should be contingent on compliance with specific criteria for the inventory and classification of heritage resources, effective protection measures, full compliance with NEPA, and on programs to enhance natural area preservation and diversity along with recreational needs.

Item 9

We agree that option B is the best of those presented. However, any amendments to the LWCF should specify and guarantee that priority be given in the fund to the acquisition, not the development, of heritage resources.

Funding

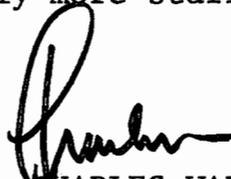
Item 11

We recommend that funding for surveys come from new funding sources.

Creation of a Council for Heritage Resources

✓ Agree with CDA's position. We recognize the value of an independent Council to review agency proposals affecting heritage resources under an expanded Section 106 procedure, but we do not believe that the proposed Council can effectively resolve conflicts between agencies or coordinate federal programs affecting heritage resources. Such tasks must be reserved to other Executive Branch mechanisms, leaving the Council as advisory only. With this proviso, we can agree with the position taken on item 12.

With respect to the makeup of the Council, of particular concern to us is the need to assure a balanced interrelationship of natural and cultural expertise. Clearly the new Council will need considerably more staff experienced in natural areas preservation.



CHARLES WARREN
Chairman

Sutmon
Rick or Bill

OMB has revised
the National Heritage
memo again, requiring
a revision in our
memo. Here is a
substitute memo. The
OMB memo is still
17 pages long, so
I think our summary
is needed.

Thanks,
Rick or Bill

THE WHITE HOUSE

WASHINGTON

December 9, 1977

MEMORANDUM FOR

THE PRESIDENT

FROM

STU EIZENSTAT *Stu*
KATHY FLETCHER

SUBJECT: National Heritage Program Proposal - Summary

The attached lengthy, excellent OMB memorandum describes Secretary Andrus' proposal for a National Heritage Program prepared in response to a directive in your Environmental Message. A summary of the proposed program components is at Tab A. There are several issues presented in the OMB memorandum for your decision. Our memorandum summarizes the key decisions in the OMB document and presents our views. We have not attempted to condense the arguments made for the various options set out in the OMB memorandum, since they are quite inclusive.

The Interior proposal was developed by people who were involved in the Georgia Heritage Trust, and included a process of extensive public participation. I think it is generally very good. It is designed to promote voluntary preservation actions and to ensure that federal actions are consistent with the goals of the program.

Following are disputed issues:

Issue 1. There are two parts to this issue:

1a. Should the existing Advisory Council on Historic Preservation be expanded to review the effects of federal actions on heritage resources?

Interior proposes that the existing Advisory Council on Historic Preservation be reconstituted to represent both historic and natural preservation expertise. The function of the Council would be to review and advise on proposed federal actions which would affect listed resources, just as the existing Council now reviews actions affecting listed historic resources. OMB would prefer that the reviewing functions be carried out in-house by the Heritage agency within Interior. I would recommend that the

Advisory Council concept be maintained, but that the federal agency representatives remain ex officio members and that the expanded responsibilities be carried out with minimal additions to the Council and staff. Natural area expertise could be added to the Council by filling public sector vacancies with suitable appointees. OMB's recommendation would involve abolishing the existing Council, which would alienate the historic preservation community. I favor Interior's proposal, because we need the support of these people for the program as a whole to succeed.

Option 1 -- expand functions of existing
Council (Interior, Stu) _____

Option 2 -- abolish existing Council and
transfer functions to
Interior (OMB) _____

1b. Should state participation in the program be dependent on stringent state requirements to protect heritage sites or on a more voluntary approach outlined in a State Heritage Plan?

OMB favors a stricter approach with the states; Interior would prefer to encourage voluntary action and not make program participation dependent on commitments which might scare off some states. While I am sympathetic to OMB's concern, I favor Interior's approach. Some states might never be able to pass the stringent requirements OMB favors and involvement would be limited.

Option 1 -- encourage voluntary state
protection actions (Interior,
Stu) _____

Option 2 -- require as a condition of
participation stringent
state protections (OMB) _____

Issue 2. Interior's proposal establishes several degrees of protection for resources of various levels of significance. There are several related issues on this point:

2a. What should be the maximum amount of protection provided?

Interior proposes to protect the nationally significant resources dedicated to preservation against any direct federal action unless "no prudent or feasible alternative" exists. CEQ could protect against indirect (permits and licenses, for example) as well as direct federal actions.

OMB would protect these sites against all federal, state or private actions. While the OMB recommendation would be more certain protection, Interior feels that voluntary actions and participation in the program would be diminished.

I favor CEQ's recommendation to protect sites against both direct and indirect federal actions. While protection against all types of action would be preferable in an ideal world, this approach might actually be counterproductive, since participation by the states in the program would be far less. The net result would be more sure protection for far fewer resources.

Option 1 -- protect only against direct federal actions (Interior) _____

Option 2 -- protect against both direct and indirect federal action (CEQ, Stu) _____

Option 3 -- protect against all types of action (OMB) _____

2b. Should the maximum type of protection be less stringent than the Interior proposal to find "no feasible or prudent alternative" as a condition of damage?

TVA, Agriculture and the Veterans Administration would prefer a standard that no "reasonable" alternative is available. This may be a distinction without a difference, but OMB and I would recommend the Interior approach because this is a standard with which we have had experience under existing law.

Option 1 -- "no feasible and prudent alternative" funding (Interior, OMB, Stu) _____

Option 2 -- use less stringent language
(Agriculture, TVA, Veterans
Administration)

2c. When a federal action is proposed which might affect "nationally significant" resources, should the agency proposing the action, the Heritage agency (within Interior) or the proposed advisory Council, make the finding of "no feasible or prudent" alternative?

Interior feels that the line agency should make this determination. OMB and I agree. CEQ feels that the advisory Council would be more objective. This is probably true, but I do not feel it is appropriate to give an advisory body actual authority over federal actions. Another option would be for Interior to make the finding. I think that the burden should be on the proposing agencies to do an adequate job of making this finding.

Option 1 -- line agency makes its own
finding (Interior, OMB, Stu) _____

Option 2 -- the advisory Council makes
the finding (CEQ) _____

Option 3 -- the Interior Department makes
the finding _____

2d. Should the maximum degree of protection be afforded all identified "nationally significant" sites or only those dedicated to preservation by their owners?

Interior's proposal would grant the maximum degree of resource protection only to sites which are voluntarily dedicated to preservation by their owners. CEQ and OMB believe that any identified "nationally significant" resource ought to be given maximum protection, regardless of the commitment of the owner. (The type of protection granted will depend on your decision on Issue 2a.) I agree with OMB and CEQ's recommendation that all nationally significant resources be given the maximum level of protection, because Interior's proposal would rely too much on the personal commitment of the owner, and important resources might needlessly be lost.

Option 1 -- give more protection to sites voluntarily dedicated to preservation by their owners
(Interior) _____

Option 2 -- protect all nationally significant sites (OMB, CEQ, Stu) _____

Issue 3. Should the historic and natural parts of the program be further merged?

Interior feels that initially, the political support for the program and the ease with which the states can phase into the program will be much greater if there is a separate identity to the historic and natural parts of the program. They would envision working with the states toward future consolidation but that priorities in each state may be skewed unjustifiably toward either natural or historic preservation if some distinction is not maintained. Interior does propose to have a merged Register of Heritage Resources which would combine and rank all of the nationally significant resources from each register, but to have separate Natural and Historic Registers. OMB would prefer to announce that the program elements will be consolidated in three years. Interior favors consolidation but does not want that to be an announced intention at the beginning. I would trust Interior's assessment of the politics of this, and would recommend the Interior proposal, with an understanding that consolidation within three years is the goal.

Option 1 -- maintain separate Registers and funding arrangements for natural and historic resources
(Interior) _____

Option 2 -- phase in consolidation of program in 3 years (OMB) _____

Compromise Option -- approve Interior's option but direct Interior to work toward consolidation in 3 years (Stu) _____

Issue 4. Budget: OMB and Interior have reached agreement on all budget elements for the Heritage Program except the amount to be made available for state grants from the Land and Water Conservation Fund and the matching formula for Historic Preservation grants.

You expressed concern that the \$98 million requested by Interior might be used for recreational developments. This is not Interior's intention. State grants under the Land and Water Conservation Fund can be used for recreational purposes, but the purpose of the additional funding is to provide sufficient funds to apply to state activities under the Heritage program. Secretary Andrus stated that it would be impossible to guarantee that some states would not use some small portion of the additional money to augment recreation acquisitions, since the funding authority is the same for both purposes. But with Interior's intention to work closely with the states in bringing them into this program, I think we can be sure that Heritage Program purposes will be met. You may wish to accompany your Budget decision with a direction to Interior to insure that these funds are used properly. OMB recommends \$50 million for the state grants; Interior has requested \$98 million. This is, of course, tied to the overall level of the Land and Water Conservation Fund. As I indicated the other day, I would recommend a funding level of \$750 million overall, which would allow Interior the full request for this program.

Interior Option for state grants -- \$98 million (Interior, Stu) _____

OMB Recommendation -- \$50 million (OMB) _____

Other _____

4a. What should be the matching rate formula for state grants under the Historic Preservation Fund grants to the states?

To stimulate rapid completion of historic resource inventories, Interior would like to increase the 50-50 matching formula for state grants to 70-30. Legislative authorization exists to make this change. OMB would prefer to keep the rate at 50-50, which would also be consistent with the Land and Water Conservation Fund formula. I agree with the intent of Interior's proposal to insure that the inventories are carried out as rapidly as possible. It would be important

to insure, however, that the increase in matching formula led to an actual increase in state activity rather than to reduced state contributions to the same level of activity. I would therefore recommend that the higher rate be approved for those states where the amount of state money stayed at least equal to state contributions under the 50-50 match.

Option 1 -- increase match to 70-30 (Interior) _____

Option 2 -- keep level at 50-50 (OMB) _____

Compromise Option -- approve increase to 70-30 for states where amount of state contribution does not decrease (Stu) _____

Announcement of the Heritage Program

Interior has suggested to us that you may wish to make a personal announcement of the Heritage program. Several options exist. For example, on December 19, the Park Service is celebrating the 200th anniversary of Valley Forge on site in Pennsylvania. The state of Pennsylvania will be presenting a gift of a parcel of land at the site. There are also two large gifts of natural areas which might form the basis of an announcement of the program -- Union Camp is donating a parcel in the Okefenokee Swamp in Georgia, and a large paper company is about to donate a parcel in Maine including 26 miles of the Appalachian Trail. Any one of these could form the basis for a Presidential announcement, if you desire.

Prepare options for Presidential announcement _____

Prefer release of White House statement only _____

Prefer Andrus announcement only _____

Other _____

THE WHITE HOUSE

WASHINGTON

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THE PRESIDENT

FROM

STU EIZENSTAT
KATHY FLETCHER

Stu

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The Interior proposal was developed by people who were involved in the Georgia Heritage Trust, and included a process of extensive public participation. I think it is generally very good. It is designed to promote voluntary preservation actions and to ensure that federal actions are consistent with the goals of the program.

Following are disputed issues:

Issue 1. Should the proposal be issued now or await the formulation of the detailed screening criteria for heritage resources?

OMB and Interior feel that the first phase of program implementation should be the preparation of criteria for resource screening. Agriculture would prefer to delay the entire proposal until these criteria are prepared.

I agree with Interior and OMB, since Agriculture's position would mean no legislation until 1979.

Option 1 -- proceed (OMB, Interior, Stu) _____

Option 2 -- delay (Agriculture) _____

Issue 2. There are two parts to this issue:

2a. Should the existing Advisory Council on Historic Preservation be expanded to review the effects of federal actions on heritage resources?

Interior proposes that the existing Advisory Council on Historic Preservation be reconstituted to represent both historic and natural preservation expertise. The function of the Council would be to review and advise on proposed federal actions which would affect listed resources, just as the existing Council now reviews actions affecting listed historic resources. OMB would prefer that the reviewing functions be carried out in-house by the Heritage agency within Interior. I would recommend that the Advisory Council concept be maintained, but that the federal agency representatives remain ex officio members and that the expanded responsibilities be carried out with minimal additions to the Council and staff. Natural area expertise could be added to the Council by filling public sector vacancies with suitable appointees. OMB's recommendation would involve abolishing the existing Council, which would alienate the historic preservation community. I favor Interior's proposal, because we need the support of these people for the program as a whole to succeed.

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Interior's proposal would grant the maximum degree of resource protection only to sites which are voluntarily dedicated to preservation by their owners. CEQ and OMB believe that any identified "nationally significant" resource ought to be given maximum protection, regardless of the commitment of the owner. (The type of protection granted will depend on your decision on Issue 3b but my recommendation is that nationally significant resources should be protected from direct and indirect federal actions.) I agree with OMB and CEQ's recommendation that all nationally significant resources be given the maximum level of protection, because Interior's proposal would rely too much on the personal commitment of the owner, and important resources might needlessly be lost.

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Prepare options for Presidential announcement _____

Prefer release of White House statement only _____

Prefer Andrus announcement only _____

Other _____

THE WHITE HOUSE
WASHINGTON

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<input type="checkbox"/>	FOR INFORMATION
<input type="checkbox"/>	FROM PRESIDENT'S OUTBOX
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wait for outbox time estimate

ACTION	FYI	
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<input checked="" type="checkbox"/>	<input type="checkbox"/>	EIZENSTAT
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<input type="checkbox"/>	ENROLLED BILL
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<input type="checkbox"/>	CAB DECISION
<input type="checkbox"/>	EXECUTIVE ORDER

Comments due to
Carp/Huron within
48 hours; due to
Staff Secretary
next day

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<input type="checkbox"/>	VOORDE
<input checked="" type="checkbox"/>	WARREN

NATIONAL HERITAGE PROGRAM PROPOSAL

The White House

Mr. Rick Hutcheson (6),
Mr. Jack Watson (3)
Mr. Eisenstadt (3)
Mr. McIntyre (3)

NATIONAL HERITAGE PROGRAM PROPOSAL

DECISION DOCUMENT

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SUMMARY: NATIONAL HERITAGE PROGRAM PROPOSAL

In his Environmental Message of 1977, the President requested the Secretary of the Interior to develop a program to coordinate, expand, and strengthen efforts to protect the cultural and natural heritage of the United States.

In a process designed to provide the widest possible range of participation, the Task Force designated by the Secretary has developed a program which:

- . provides, for the first time, a focal point within the Federal government for those interested in protecting both natural and cultural heritage;
- . combines in one organization those programs of the Department of Interior designed to protect cultural and natural heritage;
 - . a single agency for the coordination of Federal programs which impact on national heritage sites;
 - . a single agency for the coordination and encouragement of State and local efforts to protect both natural and cultural heritage sites;
- . expands and strengthens the tools available to those charged with the responsibility of protecting national heritage sites;
- . ensures and formalizes citizen participation in the recognition and protection of national heritage;
- . documents the need and sets procedures for a comprehensive inventory of national heritage resources; and
- . ensures and formalizes the full partnership between State and Federal governments necessary for effective protection of heritage resources.

The proposed program defines as our national heritage that collection of resources important to Americans because they are significant elements of our diverse history and culture and/or significant aspects of our natural environment.

The Federal heritage agency proposed for this program will be instructed by the President to implement, in full coordination with appropriate State agencies, a nationwide effort to identify resources of potential significance to our national heritage, emphasizing and ensuring public participation in this process.

The Federal heritage agency will develop classification and criteria by which State agencies would review potential heritage resources. Those resources meeting nationally uniform standards of significance will then be recorded in the appropriate (natural or cultural) register maintained by the agency. Resources listed in the registers will be designated according to regional or national significance.

All resources listed will receive protection through:

- . Laws and regulations designed to minimize actions which would result in their destruction or impairment; and
- . Affirmative policies--i.e., grant programs, tax incentives/disincentives--designed to promote their preservation and/or wise utilization.

The Secretary of the Interior will designate resources of national significance. When dedicated by their owners (either governmental or private) to perpetual protection by appropriate covenants and restrictions and by the submission of management standards approved by the Secretary of the Interior, these resources will be protected from direct action of the Federal government which would in any way destroy or impair their significance unless there is no prudent and feasible alternative to such action.

An independent council, composed of all Cabinet members and Presidentially appointed representatives of State and local governments and the private sector will be established to:

- . Review Federal projects that may adversely effect registered heritage resources; and
- . Review Federal policy and programs affecting heritage resources.

The program, if implemented as recommended, will, in five years, identify and ensure the protection of seventy percent of this Nation's heritage resources. It is designed to address resource areas not clearly addressed by existing programs, such as areas of natural diversity. It will provide truly needed direction and coordination for existing programs.

It will provide, for the first time in the history of this Nation, a single, visible, and strong advocate for those concerned with the conservation and protection of a rapidly vanishing heritage.

NATIONAL HERITAGE PROGRAM PROPOSAL

MAJOR ISSUES FOR THE PRESIDENT

A. REGULATORY ACTION

Basic Protection for Heritage Resources

Section 106 of the Historic Preservation Act of 1966 requires the head of any Federal agency responsible for a Federal or Federally assisted project and the head of any Federal agency having authority to license any project to take into account the effect of the project on any historic site included in the National Register of Historic Places. Furthermore, the Advisory Council on Historic Preservation has a reasonable time to comment on the proposed project. This requirement for review by the appropriate Federal agency and opportunity for comment by the Advisory Council has protected many valuable sites. The National Heritage Program (NHP) proposes to continue this authority and extend it to a proposed National Register of Natural Areas. The requirement for review and comment will become the minimum level of protection afforded to any heritage resource on either register regardless of their level of significance.

1. Legislation to create a National Register of Natural Areas and extend the current protection provided by Section 106 of the Historic Preservation Act of 1966 (review by appropriate Federal agency and comment by the Advisory Council) to all registered heritage resources (natural and cultural).

A. CDA Yes

Will insure a minimum level of protection to all registered heritage resources.

B. No

Will not provide an equal commitment of protection to natural heritage resources as currently provided to registered historic places.

2. Who should provide the review and comment?

A. CDA Council on Heritage Resources (See Option 7 and 12).

Implement same level of review provided under the Historic Preservation Act of 1966.

B. Federal heritage agency

Review and comment function does not require work of an independent Council, especially if the Council on Heritage Resources is authorized to make a determination of no prudent or feasible alternative to Federal action impacting significant heritage resources. (See Option 7).

No Prudent or Feasible Alternatives

The extent of protection to be afforded to national heritage resources depends on their level of significance. The strongest and most permanent (but also most costly) is acquisition. However, the NHP proposes an administrative device which would protect nationally significant resources from adverse Federal actions without relying in each case upon Federal acquisition as the ultimate protection.

Section 4(f) of the Department of Transportation Act is the source for this concept. Before the Secretary of Transportation can approve a project which would adversely affect certain lands, the law requires that he must determine that no feasible and prudent alternative to the proposed action exists. NHP proposes to apply this type of protection to our heritage resources.

3. Legislation to require that Federal action which would adversely affect heritage resources can not be approved until a determination of no feasible and prudent alternative is made.

A. CDA Yes

B. No

4. To what kinds of resources should the no feasible and prudent alternative standard apply?

A. CDA Registered areas of national significance only.

These are valuable to the nation as a whole and they deserve a greater commitment for protection by the Federal Government than do resources of less than national significance.

B. All registered resources.

There are only a few resources which are clearly important to the nation as a whole. The distinction between regional and national significance is not always clear. Therefore, any endangered resource ought to be protected.

5. Should the sites proposed for protection be formally dedicated to conservation or preservation.

A. CDA Yes

Before the government is willing to bear the cost of protecting the resource, the owner must be willing to make a formal and long-term commitment to the resource's preservation. Otherwise, these costs may be wasted if the owners change their minds about the need for protection.

B. No

Through various authorities, the Federal government has regulatory authority over actions affecting natural and cultural resources. The Section 10 permits administered by the Corps of Engineers regulate all public and private actions affecting the nation's navigable waters, Section 7 of the Wild and Scenic Rivers Act authorizes the regulation of all Federal action affecting designated or potential components of the Wild and Scenic Rivers System. Should option 4 be for sites of national significance only, then strong consideration should be given to a broad coverage of protection (Federal, State, local and private).

6. To what kind of actions should this type of protection apply?

A. CDA Direct Federal action.

Since this includes projects which the Federal government is actually constructing or financing (such as roads and dams, etc.), they are easiest to control by Federal review.

This would tend to limit the possibility of litigation over "taking" issues and the payment of unnecessary acquisition costs.

B. Indirect Federal action.

This would include private projects which the Federal government must regulate or approve before they can be started. Examples are the award of FPC licenses or the Corps of Engineers permits to develop in navigable waters.

Since the Federal government already reviews or approves these projects because of some previously determined national interest, the application to the review process of the proper criteria for protection of heritage resources is a logical expansion of the government's responsibilities.

C. State and local government actions.

D. Private

If this method is limited to nationally significant and dedicated properties, one can argue that their protection is as much in the national interest as the Corps of Engineers' responsibility to review and approve private projects which affect navigable waters (another public interest).

7. Who should make the feasible and prudent alternative determination?

___ A. ___ Council on Heritage Resources.

If the heritage agency provides "106" review, the next highest level of protection should be afforded to the Council. This requires the development of a staff capable of evaluating the various projects which may adversely affect a resource and determine whether there are prudent and feasible alternatives.

___ B. ___ Federal heritage agency.

Would require staff time to develop rather than review determination of prudent and feasible alternatives. Staff expertise is available. May not be appropriate if "106" reviews are conducted by the agency.

___ C. CDA The agency proposing the action.

Does not provide for independent determination and review of no prudent and feasible alternative.

This is consistent with the Department of Transportation process.

This forces the action agency to be more responsible about their decision. They must incorporate protective mechanisms into their operating procedures rather than assuming that this is another agency's responsibility.

B. FUNDING

The NHP proposes to utilize the Land and Water Conservation Fund (LWCF) and the Historic Preservation Fund (HPF) to ensure the involvement of the State and local governments in identifying and protecting heritage resources rather than relying only on Federal identification and protection.

National Heritage Fund

One of the needs of the NHP is for the Federal Government to assist through the existing State programs, the identification and protection of lands for both natural and cultural resources. Currently, the HPF and the LWCF are the principal funding sources.

The authorized, intend use of the LWCF is for providing recreation opportunity. The Secretary has authority to approve projects that are examples of cultural and natural heritage, and if these areas are necessary to meet priority recreation needs of the State as identified in the SCORP, they would be eligible for Fund assistance. Therefore, to use the Fund effectively, the SCORP should be expanded to include the existing HPF planning requirement and the new parallel objectives for natural heritage.

Since the NHP is a major new program thrust, serious consideration should be given to providing additional financial incentives to ensure its implementation. The NHP proposes the creation of a new grant program - National Heritage Fund (NHF). The funds could be used for natural or cultural heritage projects not otherwise provided for under existing grant programs.

8. How can we ensure that the States are encouraged to implement the heritage program?
- A. Legislation for a new grant program, the National Heritage Fund.
 - B. Clarify or amend the intended use of the LWCF for projects that protect both natural and cultural heritage.
 - C. Consider the need for a new National Heritage Fund based on an evaluation of State needs as expressed by their planning program.
 - D. CDA Options B and C above.

Funding Levels for State Assistance

If Option 8A were chosen, the Department would first need authorizing legislation before appropriations were made. The NHP proposes a first year funding level of \$100 million for the NHF. This need is based on a five year identification goal extrapolated to all 50 States and the territories based on 10 existing State heritage programs.

The LWCF is an alternative which does not require any new authorization. The Secretary could recommend increasing the States' portion of the LWCF and utilizing the authorization provided by P.L. 95-42 to compensate the decrease in Federal acquisition portion.

The other grant program which serves the Heritage Program is the HPF. Its level in FY 1978 was \$45 million. In FY 1979, its authorization is \$100 million.

9. How should we provide additional monies to the Heritage Program in FY 1979.

<u>A.</u>	<u>Program</u>	<u>\$ Million</u>
	NHF	100
	LWCF	944 (This includes \$750 authorized originally and \$194 authorized by P.L. 95-42).
	HPF	100

The NHF requires authorization legislation before appropriation.

It will take longer for the States to become eligible for NHP, therefore, all that money cannot be used in FY 1979.

<u>B. CDA</u>	<u>Program</u>	<u>\$ Million</u>
	LWCF	1042
	HPF	100

The State assistance portion of the LWCF is increased by \$98 million.

To compensate the Federal acquisition level, \$98 million of P.L. 95-42 authority is used.

This is a net increase of \$100 million over the current FY 1979 budget proposals.

This option requires that the LWCF be amended to clarify its use for natural and cultural heritage projects. (See Issue 8). Amendment would clearly identify levels of commitment to each objective either in the Act or through the annual appropriation process.

Waiting for appropriate clarification legislation will not delay the States' preparation of heritage plans because the Heritage Agency can issue interim regulations under the aegis of the LWCF authority.

<u>C.</u>	<u>Program</u>	<u>\$ Millions</u>
	NHF	25
	LWCF	969
	HPF	70

This option assumes it will take the States longer to develop their capability to spend the new funds than Options A and B.

The States' portion of the LWCF is increased \$25 million and the P.L. 95.42 authority is used to compensate the Federal acquisition level by \$25 million.

The HPF is increased by \$25 million over FY 78 level of \$45 million.

Increased Federal Share for Cultural Resource Inventory Grants

In addition to the acquisition and development of historic properties, the HPF monies may be used for survey and planning activities relating to historic preservation. For example, a State could use the funds to inventory a county for possible historic resources. The current law gives the Secretary authority to increase the Federal share of these planning and survey grants from 50% to 70%. The NHP proposes to utilize this upper limit as an added incentive to encourage the States to accelerate their inventories of cultural resources. The cognizance that a site may be a possible heritage area provides significantly more protection than when it was unrecognized. HUD Community Development Block Grants (CDBG) and "701" planning monies provide for survey and inventory work; small communities, however, (population less than 14,000) are ineligible for the CDBG.

10. Should we encourage the States to devote more resources towards the completion of cultural survey and inventory work?

A. CDA Approve the Historic Preservation Fund paying 70% of cultural planning and survey projects.

Because any site on the Register and, especially, nationally significant sites are protected by administrative procedures, identification is very important. Seventy percent funding would increase the rate of identification by fifty percent.

In terms of cost per site, identification and survey work which leads to registration is more effective than the acquisition or rehabilitation of one resource. Historic survey and inventory work for 1000 small communities would cost approximately \$6 million.

- C. Legislation to authorize a \$2 million Small Community Survey and Inventory Grants Program for three years.

This will assist small communities to complete their survey and inventory work and attain the same status as larger communities.

- D. CDA Request the Secretary of HUD to make available and to encourage eligible local governments to utilize a larger portion of their CDBG for survey and inventory work.

This will accelerate and complete the inventory work at an early date.

Funds for Federal Inventories and Survey

The NHP proposes that the President issue a directive ordering the Federal agencies to survey all their properties within five years for possible heritage resources. It is estimated that this will cost approximately \$19 million per year and would involve about 10 principal agencies.

11. How should the funding for this survey work be provided?

- A. All new funds.

We do not know what the trade-offs are if the agencies have to reprogram the funds.

BLM, FWS, and NPS have high budget demands and can not adequately meet all their existing needs now.

- B. Reprogram from existing funds.

The \$19 million estimate is preliminary and the actual work may cost less.

Spread over ten agencies, it represents less than 1% of their available funds.

- C. CDA For Interior agencies, reprogram from existing funds; for other agencies, leave the decision to the agency and OMB.

The first priority for additional funds from the NHP should be the States.

Because of the high priority of the NHP activities, the Department is willing to accommodate fiscal needs within existing resources.

C. CREATION OF A COUNCIL FOR HERITAGE RESOURCES

The NHP proposes the creation of a Council for Heritage Resources composed of the Secretary of the Interior, other cabinet members and other representatives appointed by the President. Its responsibilities could be (1) to resolve conflicts between the Heritage Agency and other Federal agencies, (2) review and coordinate Federal policy and programs affecting heritage resources, and (3) determine whether or not a prudent or feasible alternative to actions adversely affecting a heritage resource exists. This idea is similar to the function of the existing Advisory Council on Historic Preservation which reviews actions which may adversely affect a site on the existing National Register of Historic Places.

12. Legislation to create a Council for Heritage Resources?

A. CDA Yes

An independent agency is necessary to avoid any conflicts of interest and also to bring together the agencies and Presidential appointees in a neutral forum.

B. No

Since the Secretary is responsible for setting the criteria for designation and for establishing management standards for heritage resources, he should be responsible for providing advice or resolving issues on the protection of these resources without an Advisory Council.

The Secretary is capable of managing the Endangered Species Act which entails similar types of protection issues.

13. If there is a Council, what should be its responsibilities concerning the determination of prudent and feasible alternatives (See Option 7)?

A. CDA Advisory only.

B. Make the final determination.

14. How should the Council be organized?

A. CDA One Council for Cultural and Natural Resources.

This may save some costs because of economics of scale.

B. Retain existing Advisory Council on Historic Preservation and create new Council for Natural Heritage.

15. Who should be the Council Chairman?

A. Secretary of the Interior.

B. CDA Presidential Appointee.

D. FINANCIAL ASSISTANCE

Besides the Historic Preservation Fund and the Land and Water Conservation Fund, several Federal financial assistance programs are available for the acquisition and development of heritage properties (Community Development Block Grants, CETA Funds, and EDA Funds).

16. Presidential directive that priority, consideration, and technical assistance be given in the administration of all Federal grants programs available for the acquisition and development of heritage projects.

A. CDA Yes

B. No

17. Presidential directive asking the Secretary of the Interior in conjunction with the Department of Treasury and the Office of Management and Budget to study Federal tax mechanisms that could provide additional incentives/disincentives for the preservation, protection, and enhancement of natural or cultural heritage resources.

A. CDA Yes

This ensures follow-up to preliminary work initiated by the NHP and ensures coordination.

This does not commit the President to preparing a legislative tax proposal.

B. No

NATIONAL HERITAGE PROGRAM PROPOSAL

ISSUES DECIDED BY THE SECRETARY OF THE INTERIOR

So that the proposed Heritage Program may be implemented immediately, the following decisions have been made by the Secretary of the Interior.

A. CREATION OF THE HERITAGE RESOURCE AND RECREATION SERVICE

The Heritage Program is to be managed by a single agency composed of parallel divisions for natural, cultural and recreation resources. Re-creation of an agency will signal a strong commitment to the new program.

This agency will be a reconstitution of the Bureau of Outdoor Recreation under authority existing with the Secretary of the Interior. There will be no diminution of the existing BOR responsibilities regarding recreation.

The responsibilities of the National Natural Landmarks Program and the Office of Archeology and Historic Preservation with its responsibilities, both now within the National Park Service, will be transferred to the new agency.

To administer the new Heritage Program, the new agency will administer the LWCF, the HPF, and any new financial or technical assistance programs within the Heritage Program, maintain the natural and historic registers, develop management standards for nationally significant heritage areas, develop and maintain criteria for and administer the selection of heritage resources, develop and maintain information and data systems, and develop and maintain classification systems for and administer the identification of inventoried heritage resources.

B. GRANT ADMINISTRATION

The Heritage Resource and Recreation Service will administer the two principal grant programs, LWCF and HPF, as the major device to ensure State participation in the Heritage Program.

Single agency administration of the financial assistance programs will improve both Federal and State planning programs. Specification requirements for projects proposed for funding will be simplified.

An Endangered Building Revolving Fund, an authorized use of the Historic Preservation Fund, will be established.

C. NATIONAL ENVIRONMENTAL POLICY ACT

The Heritage Resource and Recreation Service will assist the Council on Environmental Quality to ensure that all Federal agencies fully adhere to procedures developed to implement NEPA. This will be done through the complete and thorough assessment of proposed program actions impacting inventoried natural and cultural resources. Resources not previously identified will be recorded. Together the two agencies will ensure that identification and assessment occurs early in the planning process to allow full public disclosure and review so as not to cause undue and costly delays.

D. HERITAGE COMMUNITIES

The Heritage Resource and Recreation Service will develop criteria for the designation, upon request of local governments, of Heritage Communities. This criteria will assess local actions towards the identification of heritage resources and the development, through the public and private sector, of coordinated resource protection and management plans. The intent of the Heritage Communities designation is to provide recognition to local governments participating in the Heritage Program.

E. ISSUES DEFERRED FOR STUDY

In addition to the above, the Heritage Resource and Recreation Service will complete, within one year, a study of the feasibility and desirability of establishing a National Bank for Historic Preservation and a Natural Resource Revolving Fund.

The National Bank for Historic Preservation would consolidate non-grant funding devices and expedite their availability to private non-profit organizations. This will stimulate protection of cultural resources by the private sector.

The Natural Resources Revolving Fund would, be established within the existing LWCF, be administered by a Federally chartered organization such as the National Park Foundation, and be used to acquire and hold significant natural areas until they can be transferred to an appropriate public agency.

NATIONAL HERITAGE PROGRAM PROPOSAL

ISSUES CONSIDERED BUT NOT RECOMMENDED
BY THE SECRETARY OF THE INTERIOR

The following two options were presented for consideration by the Task Force. After careful review no action is recommended.

A. MORATORIUM AUTHORITY

Initiate legislation to expand the existing moratorium authority on important archeological sites to significant heritage resources. The purpose of the moratorium would be to allow the Secretary of the Interior time to salvage important data or to determine an appropriate means of protection for resources which may be adversely affected.

B. FINANCIAL ASSISTANCE TO NON-PROFIT ORGANIZATIONS

Initiate legislation to amend the Land and Water Conservation Fund Act to enable States to fund projects sponsored by non-profit organizations. Similar authorization exist within the Historic Preservation Fund.