Celebrating a Year of Preservation Anniversaries
The National Trust, concerned about the responsible stewardship of the environment, has published this journal on recycled paper that meets the EPA mandate of containing at least 50% waste paper.

The National Trust for Historic Preservation provides leadership, education, advocacy, and resources to save America’s diverse places and revitalize our communities.

Forum Journal, a Journal of the National Trust for Historic Preservation, (ISSN 1536-1012) (USPS Publication Number 001-715) is published quarterly by the Center for Preservation Leadership at the National Trust for Historic Preservation, 1785 Massachusetts Avenue, N.W., Washington, D.C. 20036 as a benefit of National Trust Forum membership. Forum members also receive six issues of Forum News, and six issues of Preservation magazine. Annual dues are $115. Periodicals paid at Washington, D.C. Postmaster: Send address changes to National Trust Forum, 1785 Massachusetts Avenue, N.W., Washington, D.C. 20036.

Copyright © 2006 National Trust for Historic Preservation in the United States. Printed in the United States. Of the total amount of base dues, $6.00 is for a subscription for Preservation magazine for one year. Support for the National Trust is provided by membership dues; endowment funds; individual, corporate, and foundation contributions; and grants from state and federal agencies. National Trust Forum Journal is a forum in which to express opinions, encourage debate, and convey information of importance and of general interest to Forum members of the National Trust. Inclusion of material or product references does not constitute an endorsement by the National Trust for Historic Preservation.
Introduction: Celebrating a Year of Preservation Anniversaries
Richard Moe ................................................................. 4

The National Historic Preservation Act: A 40th Anniversary Appraisal
James A. Glass ................................................................. 8

David Harmon, Francis P. McManamon, and Dwight T. Pitcaithley ................................................................. 17

The Antiquities Act: Revolution and Evolution in Valuing America’s Exceptional Places
Roger G. Kennedy ................................................................. 26

Protecting America’s Cultural and Natural Heritage for a Second Century: The Past, Present, and Future of the Antiquities Act
Excerpts from the June 8, 2006, Forum on the 100th Anniversary of the Antiquities Act ................................................................. 32

30 Years of Federal Tax Incentives for Historic Buildings
Bradford J. White ................................................................. 38

Cover photos:
Main photo: Devils Tower, Wyo. Photo by Wayne W. Bryant, courtesy of the National Park Service Historic Photograph Collection.
Center: National Trust members, San Francisco Mint, 1962. Photo by Barney Peterson, San Francisco Chronicle, National Trust for Historic Preservation Collection, Washington, D.C.
Right: Fort Stanwix National Monument, N.Y. Photo courtesy of the National Park Service.
Introduction: Celebrating a Year of Preservation Anniversaries

Richard Moe

It’s been my experience that preservationists generally don’t need a reason for a party, but in 2006 we have good reason to celebrate. This is the anniversary year for some of the most significant legislative milestones in the history of the American preservation movement. This issue of *Forum Journal* reminds us just how significant these milestones were—and still are.

To begin with, 2006 is the 100th anniversary of the Antiquities Act, which is the subject of an article by David Harmon, Francis P. McManamon, and Dwight T. Pitcaithley as well as a selection of comments by Roger G. Kennedy and by participants in an Antiquities Act symposium held earlier this year. As these comments point out, growing concern over the future of historic resources on lands managed by federal agencies such as the Bureau of Land Management and the U.S. Forest Service gives us extra reason to be grateful for the presence of this far-sighted and essential piece of legislation.

Also marking an anniversary this year—though not addressed in this journal—is the 1966 Department of Transportation Act. Section 4(f) of the DOT Act, which requires that transportation planners avoid harming historic sites unless there is no “feasible and prudent” alternative, is the strongest federal preservation law on the books. It has saved many historic places from being paved over or otherwise impacted by transportation projects in the 40 years since it was enacted.

The 1976 Tax Reform Act is 30 years old in 2006. Admittedly, this first legislation to offer a federal income tax credit for the rehabilitation of certain kinds of historic buildings didn’t generate much rehab activity—but, as Bradford J. White’s article reminds us, it laid the groundwork for better incentives that have sparked billions of dollars in private sector investment and returned thousands of historic buildings to productive use.

Finally, the National Historic Preservation Act is 40
years old this year, and in terms of its far-reaching impact on the day-to-day work of preservation, it may be the most important law of all. James A. Glass’s article expertly chronicles the genesis and importance of NHPA, but I’d like to add some comments of my own.

If you grew up in an American city during the 1950s and ’60s, the crash of the wrecking-ball was probably part of the soundtrack of your life. During those decades, older buildings toppled like dominos, and enormous chunks of America’s heritage got smashed to rubble and hauled off to the landfill.

Much of the destruction was the product of a HUD program called Urban Renewal. The idea behind it was that the best way to revitalize America’s communities was to demolish the so-called “blighted” areas and create vacant land for new development. The first step in the process—the demolition—worked beautifully. The second step—the redevelopment—didn’t always go so smoothly. In city after city, the vacant lots that were the calling-card of Urban Renewal sometimes stayed vacant for years.

As if that weren’t bad enough, those same years also saw the beginning of construction of the interstate highway system. Robert Moses, perhaps the most prolific road-builder of the 20th century, described his technique this way: “...when you’re operating in an overbuilt metropolis, you have to hack your way with a meat ax.” That’s a sadly accurate image of the catastrophic impact of the interstate highway system on America’s cities. Viable neighborhoods were turned into overpasses and on-ramps. Communities were literally torn apart. It was almost as if America had declared war on itself.

Against this backdrop of devastation, some people decided to try to put the brakes on the bulldozers by strengthening the federal government’s role in, and commitment to, historic preservation. One product of these efforts was a special committee on historic preservation that operated under the auspices of the U.S. Conference of Mayors, with staff support provided by the 16-year-old National Trust for Historic Preservation. This committee, having spent several weeks in consultation and deliberation and in meetings with European preservationists, issued a groundbreaking document entitled With Heritage So Rich.
I suspect that most preservationists have never read With Heritage So Rich. That’s a shame, because it’s a compelling piece of work, offering an eloquent statement of why our heritage matters, and what preservation means to all of us. Parts of it are downright moving, which is not something you can say about many committee reports.

Congress made With Heritage So Rich the basis for the National Historic Preservation Act, which was signed into law by President Johnson 40 years ago this fall. NHPA accomplished practically everything the authors of With Heritage So Rich had envisioned: It created the National Register of Historic Places, established the President’s Advisory Council on Historic Preservation, led to the appointment of state historic preservation officers, and provided federal matching grants to support the work of these officers.

These and other provisions make NHPA a textbook example of the principles of federalism. It creates interlocking roles for federal and state governments and recognizes the importance of partnerships between the public and private sectors. In short, it recognizes that in preservation as in most other endeavors, good balance is a key to success. It literally reinvented preservation in America.

In just about every way, the world of 2006 is very different from the world of 1966. For preservationists, many—if not most—of the changes that have occurred since NHPA was enacted are a direct result of what this law said and did.

Like almost every piece of early preservation legislation, this one was born out of the urgent need to prevent demolition—and it has been very effective in that regard. To be sure, old buildings still get demolished, but they’re no longer torn down as a matter of course—and rarely by federal agencies. Nowadays, renovation and adaptive use are widely regarded as viable—even preferable—alternatives to demolition. And preservationists are much more closely involved in the planning that can head off demolition before things reach the crisis stage.

But in addition to helping prevent the loss of places that people care about, NHPA accomplished some other things that are equally important:

To begin with, it laid the groundwork for the provision of federal income tax credits...
as an incentive for preservation—just one of the many ways in which NHPA helped foster a widespread recognition of preservation’s social and economic benefits. The work of the Main Street program; the explosive growth of heritage tourism; the rediscovery of in-town neighborhoods as desirable places to live; the increasing acceptance of the principles of smart growth and sustainable development; the recognition of preservation’s value in fostering the sense of confidence and continuity that is essential in a stable society—all of these are at least partially sustained by the principles laid down in NHPA. The people who wrote this legislation in 1966 couldn’t foresee the world of 2006, but they gave us the tools to make it a better, more meaningful, more livable place.

Perhaps most important of all, the philosophy embodied in NHPA jump-started the process of moving preservation into the mainstream of American life. That philosophy is encapsulated in a passage from With Heritage So Rich:

*If the preservation movement is to be successful, it must go beyond saving bricks and mortar. It must go beyond saving occasional historic houses and opening museums. It must be more than a cult of antiquarians. It must do more than revere a few precious national shrines. It must attempt to give a sense of orientation to our society, using structures and objects of the past to establish values of time and place.*

The idea expressed in that passage—the notion that preservation is for everyone, that it could play a meaningful role in present-day life—was a novel concept in its time. Even now, 40 years later, it’s hard to overstate its importance. It helped people realize that saving our legacy from the past isn’t someone else’s job. It helped foster the notion that our heritage isn’t something to be kept behind velvet ropes. It opened our eyes to the fact that we can—and should—keep our history alive and close at hand where we can live with it, learn from it, and be inspired by it.

When I review the history of the legislative milestones whose anniversaries we mark this year, one word keeps running through my mind: vision. The people who wrote these laws had a clear and expansive vision of what preservation is all about. They were giants, and we stand on their shoulders—which means we’re in an excellent position to continue the work they started.

---

Richard Moe is the president of the National Trust for Historic Preservation. This article is adapted from an address delivered by Richard Moe at the annual conference of Colorado Preservation, Inc., on February 10, 2006.
The National Historic Preservation Act: A 40th Anniversary Appraisal

James A. Glass

Forty years ago this year, a blue ribbon committee of government and civic leaders published a book calling for a national policy in historic preservation and lobbied for passage of perhaps the most important federal legislation on historic preservation in American history. The panel was the Rains Committee, the book was With Heritage So Rich, and the legislation was the National Historic Preservation Act of 1966.

The Destruction of Heritage

The committee was formed largely in response to anger and desperation among grassroots preservationists across the United States over destructive actions of the federal government. Since World War II the largest economic boom in the history of the country had fueled massive, dislocating changes in the physical fabric of American cities and the surrounding countryside. As the income of American families soared, the American dream swiftly became redefined: It seemed that every family aspired to live in a detached home in a suburban subdivision reached by the family automobile. The new suburban dwellers abandoned apartments and houses in cities, and urban neighborhoods lost value and deteriorated. Partially in response to demand for rapid commuting routes, the Eisenhower administration and Congress in 1956 created the interstate highway system, which in part served to create freeways that ran through historic neighborhoods and downtowns to provide efficient travel for the millions of workers commuting to and from the suburbs.

The disinvestment in urban neighborhoods produced what urbanologists of the 1940s and 1950s called "blight." The federal government responded with the Urban Renewal program, under which federal authorities made available hundreds of millions of dollars to local redevelopment authorities for clearance of blighted buildings.
in urban slums. Thousands of deteriorated historic homes and commercial buildings were razed with federal money, and cities across the country became known for the large stretches of vacant land where 19th-century neighborhoods and landmarks once stood.

The General Services Administration (GSA), supplier of workspace for federal agencies, joined in the destruction of historic buildings. Responding to demands by its clients for additional space and modern offices, GSA abandoned several notable historic post offices, courthouses, and custom houses in the 1950s and 1960s, with demolition often following.

The National Trust for Historic Preservation, chartered by Congress in 1949 to facilitate public participation in historic preservation, began to hear outcries from local preservationists over the loss of historic landmarks and neighborhoods. Helen Duprey Bullock, editor of the Trust magazine, *Historic Preservation*, published letters of anguish over the actions of the Urban Renewal Administration, the Federal Bureau of Public Roads, and the GSA. The Eisenhower administration did not heed calls for legislation to curb the federal destruction, but a change of attitude was apparent with the administrations of Presidents John F. Kennedy and Lyndon B. Johnson after 1961. As related by Kathleen P. Galop in the Spring 2006 issue of *Forum Journal* (“The Historic Preservation Legacy of Jacqueline Kennedy Onassis”), First Lady Jacqueline Kennedy took the unprecedented step in 1962 of intervening with the GSA to stop the demolition of the historic row houses fronting Lafayette Square in Washington. Lady Bird Johnson shared Mrs. Kennedy’s concerns over the threats to national heritage and incorporated them into her own emphasis on the protection of natural beauty.

At the same time, preservation activists were stressing the importance of shifting the focus of historic preservation away from turning individual landmark buildings associated with patriotic figures into museums. The new ideal increasingly was to conserve whole historic neighborhoods or downtown commercial districts as active areas where people could live and work. The National Trust supported this broadened definition, and Ronald F. Lee, a Trust trustee and an advisor to National Park Service director George B. Hartzog, Jr., urged Hartzog...
to broaden the National Park Service’s previous emphasis on preserving national landmarks to encouraging the preservation of neighborhoods and areas of state and local importance. Secretary of the Interior Stewart Udall was already an outspoken advocate for conservation of natural areas and gave the new emphasis ready support.

The Rains Committee

The Rains Committee, headed by former Alabama congressman Albert Rains, was assembled in 1965 with the advice of National Trust trustee and preservation consultant Carl Feiss and Trust executive director Robert R. Garvey, Jr. Both believed that the time was right for a panel of congressional leaders, federal agency heads, state and local government representatives, and Trust leaders to visit Europe, see how governments there encouraged preservation of their heritage, and draw up recommendations for legislation in the United States.

The committee published a book of essays, findings, and recommendations in January 1966, With Heritage So Rich. In her foreword, Lady Bird Johnson appealed for Americans to preserve and “preserve wisely.” Essays in the book combated popular stereotypes of the narrow, uneconomical focus of historic preservation. Preservation in 1966 was concerned with viable communities of neighborhoods in which people lived and gained meaningful connections. Preservation was now an activity that made economic sense, stressing adaptive use of buildings for contemporary functions that could attract financing and income. Use as a museum was no longer desirable for most historic structures.

The Rains Committee made sweeping recommendations that provided a blueprint for governmental action: a national statement of preservation policy; creation of an interagency Advisory Council on Historic Preservation to coordinate federal actions and
foster preservation; creation of a National Register that would include communities, areas, structures, sites, and objects of national, state, and local importance; authority for federal agencies with construction projects affecting historic places to fund preservation; tax incentives to encourage owners of historic properties to preserve and restore; loan programs to encourage acquisition and rehabilitation of historic structures and districts; and enactment of a federal scholarship and training program to stimulate the education of career professionals in historic preservation. The National Trust should be afforded matching grants to assist it in carrying out its mission.

The National Historic Preservation Act

With vigorous lobbying by the Rains Committee, a bill embodying most of its recommendations emerged from Congress and was signed into law by President Johnson on October 15. The act announced a clear statement of national preservation policy in its preamble:

The Congress finds and declares (a) that the spirit and direction of the Nation are founded upon and reflected in its historic past; (b) that the historical and cultural foundations of the Nation should be preserved as a living part of our community life and development in order to give a sense of orientation to the American people; (c) that … the present government and non-governmental historic preservation programs and activities are inadequate to insure future generations a genuine opportunity to appreciate and enjoy the rich heritage of our Nation; and (d) the Federal Government [should] … accelerate its historic preservation program and activities …

The law provided for matching grants to the states to conduct surveys of historic properties, nominate such properties for listing in a National Register, prepare statewide preservation plans to guide expenditures, and use appropriated funds to acquire and preserve historic places listed in the Register. Section 106 created a system of protection for historic properties affected by federally financed or licensed projects, under which federal agencies would take into account the effects of their undertakings on such properties and offer a reasonable opportunity for comment by the new Advisory Council on Historic Preservation. The act also authorized matching grants to the National Trust.
The New Preservation

The National Park Service, charged with carrying out the new law, recruited William J. Murtagh, formerly director of programs and education at the National Trust, as the first Keeper of the National Register. Murtagh promoted an extensive public education program for the new state historic preservation officers (SHPOs) appointed in each state to receive federal preservation funds and carry out the functions called for. The “New Preservation” philosophy underlying both With Heritage So Rich and the Historic Preservation Act was stressed in conferences and workshops. The “New Preservation” called for the SHPOs to encourage the conservation of historic communities, neighborhoods, and districts through conversion to “compatible modern uses.” Murtagh and his colleagues Robert M. Utley and Russell Keune also emphasized the importance of architecture, design, and aesthetics as new rationales for preservation. After funds began to flow to the states in 1970, the SHPOs recruited professional staffs drawn from the fields of history, architecture, and archeology, and began to promote the goals of the New Preservation.

The states undertook surveys to identify properties eligible for the National Register and nominated diverse properties for listing so that the Register gradually assumed the comprehensive character urged by the Park Service. By 1986, 20 years after passage of the preservation act, more than 75 percent of the 88,334 listings in the National Register were cited for architectural significance and 13 percent were historic districts. In addition, 56 percent of the listings were of local significance. This contrasted with the 800 initial listings in 1966, all of which were of national significance, cited for historical importance, and individual landmarks (Carol Shull, “The National Register After 20 Years,” With Heritage Still So Rich, a supplement to Preservation News, October 1986, p. S9).

Section 106 Takes Shape

The Register itself had been seen in 1966 as the central feature of the new federal-state preservation program, intended to serve as a complete list of what was historic and what should be taken into account when public or private development projects were planned. That soon changed, as the Advisory Council on Historic
Preservation, under its executive director, Robert Garvey, realized that Section 106 reviews would afford protection to just a tiny number of historic places if agencies only had to consider those listed in the Register. Nominations to the Register required a sometimes lengthy review process involving both SHPOs and the Park Service. Therefore, the Council and Park Service successfully sought an executive order by President Richard M. Nixon in 1971 that directed federal agencies to take into account all properties eligible for the Register, as well as those listed, for purposes of Section 106 reviews. As a result, there was a shift from conducting surveys to augment the Register in general to conducting surveys to identify projects eligible for listing that would be affected by specific federal projects.

Role of the SHPOs

The SHPOs became the primary actors in carrying out the National Historic Preservation Act, as they assumed in the early 1970s the role of reviewing all federal projects under Section 106, as well as surveying, planning, nominating listings for the Register, and spending grant funds on preservation projects. Ernest Allen Connally, first chief of the Park Service’s Office of Archeology and Historic Preservation, saw the key functions of the federal-state program as identifying, enhancing, and protecting. The state offices were the principal agents in carrying out all three: They identified historic places through surveys, they enhanced (restored) properties owned by nonprofit organizations or government agencies through federal matching grant funds, and they initiated protection through their Section 106 consultations with federal agencies and the Advisory Council.

Appropriations from Congress sufficient to support the state offices were slow in coming in the early years,
so the SHPOs formed a National Conference of State Historic Preservation Officers (NCSHPO) and began to lobby their congressional delegations effectively. Appropriations rose from $88,500 in fiscal year 1969 to $47.121 million in fiscal year 1979. A lobbying coalition of the NCSHPO, Park Service, National Trust, and a new citizens lobbying organization, Preservation Action, succeeded in securing creation in 1976 of a special Historic Preservation Fund drawn from off-shore mineral drilling lease revenues. The fund facilitated an increase in appropriations for the states and National Trust through 1981, when the new administration of President Ronald Reagan recommended appropriations be ended as part of an imperative to cut domestic spending. Despite action by Congress to restore part of the cut that year and subsequently, appropriations for the states since 1981 have never risen back to their 1980 level.

Preservation Tax Incentives Stimulate Rehabilitation

The recommendations of the Rains Committee for tax deductions to encourage private investment in historic preservation gathered increasing support during the early 1970s and through the particular efforts of Preservation Action resulted in creation of a tax deduction in 1976 for rehabilitation of historic income-producing properties. This deduction spurred approximately $1 billion in private investments between 1977 and 1981 and impressed Congress and the Reagan Administration, which transformed it into a 25 percent income tax credit for the rehabilitation of historic commercial properties in 1981. The credit attracted hundreds of developers and investors, who succeeded in getting listed in the National Register historic commercial buildings, factory structures, and apartment buildings and then undertook rehabilitations. Between 1981 and 1987, when a less attractive version of the tax credit took effect, an additional $9 billion was spent on rehabilitation and adaptive new uses for historic income-producing structures.

The Park Service in 1976 issued “The Secretary of the Interior’s Standards for Rehabilitation and Guidelines for Rehabilitating Historic Buildings” to provide guidance for rehabilitations funded by federal agencies and projects approved under the 1976 tax incentives. The SHPOs and Park Service reviewed each application for tax incentives/credits, and gradually owners, developers, and architects responded with proposals to rehabilitate historic commercial buildings in ways that conserved their essential character.

Protection on the Defensive

The Reagan Administration introduced a period in the 1980s of low tolerance for federal regulations, and Section 106 was caught up in a push to streamline review of federal undertakings. The Advisory Council repeatedly revised its regulations to de-emphasize its involvement in project reviews, and the SHPOs took on ever greater responsibility for assuring that agencies took into account the effect of their projects on historic properties. Nevertheless, as the decades passed, Section 106, like much other environmental legislation of the 1960s and 1970s, became institutionalized in much of the federal bureaucracy. It remained unpopular with some agencies and some federal grant recipients in state and local governments, but it was tolerated by most.
The Role of the National Trust

The National Trust, because of the financial support it received through the National Historic Preservation Act, was able to realize its core mission to a degree unimaginable in 1966. The annual allocation, which rose to a high point of $5.4 million in 1979, enabled the private organization to pay for direct mailings to potential members, which helped increase its membership from approximately 2,500 in 1966 to nearly 250,000 in the early 1990s. The annual federal grant also enabled the Trust under James Biddle, president from 1968 to 1980, to engage more fully in its educational mission to the public at large and provide technical and financial assistance to local preservation organizations. The Trust opened regional offices around the country to bring its services closer to its constituents and in 1981 launched a highly successful National Main Street Center that helped start state Main Street offices and hundreds of local Main Street programs. The Trust hit a period of turbulence in the early 1990s, when a new Republican majority in Congress moved to end direct subsidies of advocacy organizations. Under President Richard Moe the Trust swiftly moved to wean itself from federal funds and to raise an operating endowment and other sources of revenue to preserve its independent stance.

Appraisal of the Historic Preservation Act

How successful has the National Historic Preservation Act been? It has been used very effectively over the past 40 years to provide a language and philosophical direction to the preservation movement. It has led to the creation of state preservation offices in every state and greatly expanded programs at
the National Trust that have in turn greatly increased public consciousness of heritage. The actions of federal agencies, the cause of much outrage in the 1960s, have been largely reoriented to adaptive use and conservation. The tax credits have stimulated much rehabilitation of historic commercial structures. The National Register has become a household term in many communities, and nearly every community has at least one Register listing.

On the other hand, the wave of public concern that led to the protective provisions of the act has receded, and political support for them in Congress has declined. Appropriations for the states seem to be stuck at anemic levels, and the future of state participation in the program created by the act increasingly may be in doubt.

The 40th anniversary of the act is a time for preservationists to remember what the law has bestowed on the movement and to take action to conserve what the preservation leaders of 1966 worked so hard to establish.

James A. Glass is director of the Graduate Program in Historic Preservation and the Center for Historic Preservation at Ball State University and a Trust Advisor.

The history of American archeology, conservation, and historic preservation often is told in terms of legal milestones, and rightly so. An environmental activist working to expand a nearby park, a historic preservationist trying to save a cherished old building, a volunteer working on a national wilderness campaign, an archeologist investigating an ancient village site in advance of reservoir construction—all are working from a solid foundation of statutory authorities that, law by law, have expanded protections for archeological resources, historic structures, and natural areas. There are many laws that mark critical junctures in our national conservation policy, yet what is arguably one of the most important of them all remains little known outside of specialist circles. That law is the Antiquities Act of 1906.

The influence of the Antiquities Act extends far beyond what is suggested by its quaint title. In truth, the name of the act is downright misleading—or at least seriously deficient, because the law has been used to protect vast natural areas in addition to the kind of well-defined archeological sites that the word “antiquities” connotes. A mere tangle of terminology? It is that, but also much more. The name signifies the controversy that has swirled around the act throughout its history: whether the scope of discretionary proclamations as exercised by various presidents has far exceeded what was intended by Congress.

The heart of the controversy is an innocuous clause at the beginning of Section 2. Here, the president is authorized to “declare by public proclamation historic landmarks, historic and prehistoric structures, and other objects of historic or scientific interest that are situated upon the lands owned or controlled by the Government of the United States to be national monuments, and may reserve as a part thereof parcels of land, the limits of which in all cases shall
The key phrases are "objects of historic and scientific interest" and "confined to the smallest area compatible with protection and management can be millions of acres in extent. Yet it is this second, expansionist interpretation that has been adopted by a number of presidents, Republican and Democrat alike, over the past century.

The Importance of the Antiquities Act

The precedent began with the man who signed “An Act for the Preservation of American Antiquities” into law on June 8, 1906: the larger-than-life Theodore Rex, as one of his recent biographers has called him. Congress was well aware of the character of the president into whose hands it was delivering the law, of his sovereign vision of power and his willingness to wield it. And, characteristically, Theodore Roosevelt wasted very little time before making use of the Act. On September 24, 1906, he proclaimed the first national monument: the imposing monolith of Devils Tower in Wyoming. Before he left office in 1909, Roosevelt declared 17 more, and therein lies the beginning of our story. Many of them, like Devils Tower,
conformed to a strict reading of the act. But several, such as the Grand Canyon and Mount Olympus, were Rooseveltian in scope.

TR’s dynamic use of the act set off reverberations that are still being felt today. It was as if he emboldened his successors to dare to match the spirit, if not the sheer volume, of his example. As a result, no other law has had such a wide-ranging influence on the preservation of our nation’s cultural and natural heritage. Why is the Antiquities Act so important?

Creation of National Monuments
As just noted, the act gives the president the power to unilaterally declare, independently of Congress, protected national monuments from tracts of existing federal public land. These monuments range from prehistoric ruins and other objects of antiquity (hence the act’s name) all the way up to entire landscapes of ecological and scientific importance, covering thousands or even millions of acres. The act has been used by 14 presidents to proclaim new national monuments or expand existing ones. These monuments, which currently cover roughly 168 million acres, include world-class protected natural areas, many of which have gone on to receive national park status, and cultural sites of international renown. Of America’s 20 World Heritage sites, 7 originated as national monuments under the Antiquities Act:

• Carlsbad Caverns National Park
• Chaco Culture National Historical Park
• Grand Canyon National Park
• Olympic National Park
• Statue of Liberty National Monument
• Glacier Bay National Park and Preserve
• Wrangell-St. Elias National Park and Preserve.

The Study of Archeological Resources
The act also established the primacy of commemorative, educational, and scientific values for archeological resources. Section 3 of the act establishes the regulation of archeological investigations on public lands and states that such investigations are “for increasing the knowledge of [archeological sites and] ... objects, and ... for permanent preservation in public museums.”

In one long sentence, the second half of this section makes clear that archeological sites and the items removed
from them are most important for what we can learn from them with proper study. The objective of archeological investigations is to study the past through historical and scientific methods, not to retrieve objects for display, exhibit, or sale.

A Foundation for Heritage Professionalism

The act provides a legal and public policy foundation for public archeology in the United States, and for public agencies being involved in the preservation of historic places and structures. Its provisions have done much to foster the development of the professions of archeology, history, and historic preservation in the public sector in this country, and has had an important influence on anthropology and paleontology as well.

A Scientific Basis for Nature Preservation

The act was the first law to systematically enable the creation of large-scale nature reserves for scientific (rather than scenic or economic) reasons. Not only did it therefore prefigure today’s emphasis on landscape-scale ecosystem conservation by nearly a century, it remains a vital tool for such efforts. In fact, over the past 30 years practically the only big nature reserves created by the federal government have come as the result of monument declarations under the Antiquities Act.

Presidential Prerogative

The act established the power of the president to proactively preserve important cultural sites and natural areas (up to and including large landscapes of ecological value) that are threatened with degradation or outright destruction. This “one-way” power—the president can unilaterally establish national monuments, but only an act of Congress can abolish them—is an important legal
doctrine that has enhanced the strength of the presidency.

Simply put: In shaping public policy to protect a broad array of cultural and natural resources, the impact of the Antiquities Act is unsurpassed.

The Players

Three of the fathers of the law deserve special mention, the first two being its principal architects, and the third its precedent-setting first executor. Today the names of Edgar Lee Hewett and John F. Lacey are all but forgotten except by archeologists and historians of conservation, but their relative obscurity is undeserved. Hewett was an administrator, author, and educator as well as a field archeologist, whose mix of experience and talent enabled him to forge the compromise that became the final text of the act. Hewett was one of those invaluable behind-the-scenes brokers without whom most laws would never get through the proverbial sausage factory. The story of how Hewett managed to get squabbling factions to come together behind the language of the act is one of perseverance mixed with political and professional acumen and flexibility.

Any antiquities bill, no matter how carefully written, faced a major hurdle in the House of Representatives in the form of the Committee on Public Lands, through which all such legislation had to pass. Because the committee was dominated by members from the West who were largely wary of federal power, success for the Antiquities Act depended on the political skill of the committee’s chairman, John F. Lacey. This Iowa congressman was a major figure in conservation at the turn of the 20th century, however his personal background provides few clues as to what fueled his interest in nature protection.

By declaring the vast landscape of the Grand Canyon to be a single national monument, Roosevelt stretched the language of the Antiquities Act to its very limits—and perhaps beyond. Later presidents have continued to use this “expansionist” interpretation. Photo by George A. Grant (c.1930), courtesy of the National Park Service Historic Photograph Collection.
No such mysteries attend our third figure, who occupies an altogether different dimension. Theodore Roosevelt is one of the legends of the White House, an iconic face on Mount Rushmore, and the historical grounds of his interest in conservation have been mapped again and again by his biographers. Much of Roosevelt’s use of the Antiquities Act was influenced by the doctrines of Progressivism, by its rock-steady faith in the capacity of professional expertise to (paternalistically) improve the American republic. This is a supremely self-confident ideology, daring to do great things, one that meshed perfectly with TR’s natural bent. It goes a long way toward explaining why he had no

“National Monuments” and “National Parks”

Once the Antiquities Act was passed, a question arose as to the difference between a national monument and a national park. In 1922, Jenks Cameron specified: “The object of a monument is the preservation from destruction or spoliation of some object of historic, scientific, or other interest. The object of a park is that and something more; namely, the development of the area reserved for its more complete and perfect enjoyment by the people. It might be said that a monument is park raw material, because many of the existing monuments, in all probability, will receive park status when their development as parks is practicable.” (The National Park Service: Its History, Activities and Organization, Institute for Government Research)

By 1930, however, the National Park Service was downplaying these distinctions: “The national parks and national monuments are so closely allied that it is difficult to draw a hard and fast line between them. Generally speaking, national parks are areas preserved in Federal ownership by act of Congress because of their outstanding scenery, national in character. The national monuments, on the other hand, are reserved because of their historic, prehistoric, or scientific interest.” (Glimpses of Our National Monuments, Washington, D.C., U.S. Government Printing Office)

Most recently, the National Park Service provided these definitions in The National Parks: Index 2005-2007 (page 7):

“Generally, a national park contains a variety of resources and encompasses large land or water areas to help provide adequate protection of the resources.”

“A national monument is intended to preserve at least one nationally significant resource. It is usually smaller than a national park and lacks its diversity of attractions.”
compunction in stretching the language of the act to its very limits—and perhaps beyond.

If one agrees with the expansive, big-canvas conservationism of a Theodore Roosevelt, then the precedent he set with his monument proclamations is a bold stroke of statesmanship, something to be celebrated. But many local interests, especially in the West, resolutely decline to attend that party, for it is their dreams of commerce that are directly curtailed whenever a new monument is set aside.

Controversy Over the Years

The showdown between President Franklin Roosevelt and Wyoming politicians over the creation of Jackson Hole National Monument nearly blew apart the Antiquities Act in the 1940s. Had the presidential powers under the act been emasculated at that time, as many in and around Jackson Hole fervently wished, the most serious repercussions would have been felt two generations later in, of all places, Alaska. That is because in 1978 President Jimmy Carter used the Antiquities Act to preserve tens of millions of acres of the state as national monuments, forestalling the transfer of what was then unassigned national-interest public domain to non-conservation status.

When the act is in the public eye at all, it is because of controversies such as these. But as we’ve suggested above, the law is about much more than the proclamation of national monuments.

The law has helped create a foundation of public values for commemoration and education, as well as for heritage professionalism, and a scientific basis for nature conservation. The act has fostered the non-commercial values of archeological, cultural, and historic resources, and supported the nascent profession of archeology in the United States by providing it
with an intellectual and ethical foundation of stewardship.

The Antiquities Act was not just a radical departure from previous public policy on national heritage, but a lasting one. It proved to be the direct ancestor of the Historic Sites Act of 1935 and the National Historic Preservation Act of 1966; the latter still forms the foundation of most historic preservation in America.

Some critics remind us that there have been negative ramifications of the act. Broadening the public control and ownership of ancient archeological sites has alienated native Americans from their heritage. By limited legitimate access to the investigation of archeological sites to experts, the interpretation of non-expert Native Americans about these sites were denigrated and ignored by many. The act also set a precedent for the use of scientific, rather than scenic or economic, justifications for setting aside large protected natural areas.

Much to the consternation of some in the National Park Service, which oversees the vast majority of the monuments as units of the national park system, President Clinton assigned responsibility for most of the monuments he proclaimed to other agencies, the Bureau of Land Management in particular. Almost at a single stroke the BLM was thrust into a situation where it had to develop a new protected area paradigm that fit into its multiple use mandate—one very different from the NPS ethos. Though many consider NPS and BLM strange bedfellows, in two new national monuments they have been given shared management responsibility.

The year 2006 marks the one-hundredth anniversary of the act. The centennial affords an unparalleled opportunity for present-day stewards to reflect on its historic achievements and critique its shortcomings, to remind fellow professionals and the general public of its continuing importance, and to look ahead to its future in the 21st century.


Notes
1 Confusingly, there are numerous other parks and protected areas, authorized through regular congressional legislation rather than through the Antiquities Act, that are designated “National Monument” (or were at the time of their creation). Examples include Agate Fossil Beds, Badlands (now National Park), Booker T. Washington, Canyon de Chelly, Congaree Swamp (now Congaree National Park), El Malpais, Mount Saint Helens Volcanic (managed by the U.S. Forest Service), and Pecos (now National Historical Park), among many others. Throughout this article, the term “national monument” will be used as shorthand for any park or protected area, no matter what its current designation, that originated or was expanded through the use of the Antiquities Act—thereby excluding such parks as those listed above.
2 Of this total acreage, more than 89 million acres are part of the Northwestern Hawaiian Islands National Monument, proclaimed by President Bush in June 2006. The new national monument consists almost entirely of open waters in the Pacific Ocean; in fact, it is the largest marine protected area ever created.
3 Wrangell-St. Elias and Glacier Bay actually are part of a single World Heritage site made up of a complex of parks, including several in Canada.
4 The primacy of a non-commercial value in United States public policy for other kinds of cultural and historic resources continues from its foundation in section 3 of the Antiquities Act to the 1935 Historic Sites Act and the 1966 National Historic Preservation Act, the three most important cultural resource statutes of the 20th century.
An Act for the Preservation of American Antiquities

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That any person who shall appropriate, excavate, injure, or destroy any historic or prehistoric ruin or monument, or any object of antiquity, situated on lands owned or controlled by the Government of the United States, without the permission of the Secretary of the Department of the Government having jurisdiction over the lands on which said antiquities are situated, shall, upon conviction, be fined in a sum of not more than five hundred dollars or be imprisoned for a period of not more than ninety days, or shall suffer both fine and imprisonment, in the discretion of the court.

Sec. 2. That the President of the United States is hereby authorized, in his discretion, to declare by public proclamation historic landmarks, historic and prehistoric structures, and other objects of historic or scientific interest that are situated upon the lands owned or controlled by the Government of the United States to be national monuments, and may reserve as a part thereof parcels of land, the limits of which in all cases shall be confined to the smallest area compatible with proper care and management of the objects to be protected: Provided, That when such objects are situated upon a tract covered by a bona fide unperfected claim or held in private ownership, the tract, or so much thereof as may be necessary for the proper care and management of the object, may be relinquished to the Government, and the Secretary of the Interior is hereby authorized to accept the relinquishment of such tracts in behalf of the Government of the United States.

Sec. 3. That permits for the examination of ruins, the excavation of archaeological sites, and the gathering of objects of antiquity upon the lands under their respective jurisdictions may be granted by the Secretaries of the Interior, Agriculture, and War to institutions which they may deem properly qualified to conduct such examination, excavation, or gathering, subject to such rules and regulation as they may prescribe: Provided, That the examinations, excavations, and gatherings are undertaken for the benefit of reputable museums, universities, colleges, or other recognized scientific or educational institutions, with a view to increasing the knowledge of such objects, and that the gatherings shall be made for permanent preservation in public museums.

Sec. 4. That the Secretaries of the Departments aforesaid shall make and publish from time to time uniform rules and regulations for the purpose of carrying out the provisions of this Act.

Approved, June 8, 1906
The Antiquities Act: Revolution and Evolution in Valuing America’s Exceptional Places

Roger G. Kennedy

The Antiquities Act of 1906 serves an American tradition of public stewardship by providing places in which to learn and time to learn about them before they are so altered as to render their messages to us unintelligible. The act provides time to think about time—time and people in place. Antiquities are the lasting evidence of people in place.

The Antiquities Act gives to a president discretionary authority to place a “stop!” sign in the path of the destruction of a place of national teaching and learning. Time is of its essence. It gives pause-points for protection, double-bars in the musical scoring of policy formation, intervals for deliberation, periods in which to consider more fully the consequences of what we do over time, and what may happen if we do injury that not even time can heal. Fittingly, it is called an “antiquities” act—the defining characteristic of “antiquity” is survival over time.

When Congress passed the act, it was expressing a choice in the kind of discretionary authority it wished to allow a president. It was moving toward withdrawing presidential power to designate forest reserves for their productive value granted under the Forest Service “Creative Act” of 1891. In 1906, as if in exchange, presidents received power under the Antiquities Act to designate places for their instructive and scientific value.

The shift from discretionary authority to designate forest reserves to discretionary authority to protect “antiquities” (very, very broadly defined) entailed a remarkable shift of emphasis from “productive” value (as a crabbed economist might define “productive”) to historic and scientific—instructive—value. Something of “scientific interest” must possess the power to inform an inquirer of something worth knowing. Human history and prehistory in the East and in the West—Mound
City in Ohio and Chaco Canyon in New Mexico—were important to those supporting passage of the Antiquities Act. Yet they also provided ample discretion to save places instructive of other subjects, granting special powers to presidents to move expeditiously to preserve in the national interest opportunities for education—quite another class of “objects” than those that further opportunities for exploitation.

This choice is the pivot point in our discussion. It does not require genius for a wood-requiring economy to assure a supply of lumber. But why should we value places having time-depth—we call such places “historic”—and learning-depth—and thus of “scientific interest”? Because such places teach, and because we wish to learn—not just to consume what nature produces. Specifically, then, what did the leaders of the nation’s First Great Environmental Awakening expect their countrymen to learn from American antiquity?

The Congress gave the president power to help succeeding generations learn from and about nature—not just to consume what nature produces. Roosevelt’s first monument—Devils Tower in Wyoming—is instructive both as a geological feature and as a sacred place for many American Indians.

In both the East and the West, the reach of presidential designation has been extended from areas no larger than a half-acre (Cabrillo National Monument, Calif.) or within the scarp and abutments of Forts McHenry (Md.), Fort Pulaski (Ga.), and Fort Matanzas (Fla.), to comprehend ranges of mountains in Alaska and deserts of endless horizons in California and Utah, and each time affirmed by congressional action. That affirmation has taken two forms: ratification by elevation each time the Congress has accepted a presidentially designated monument and made of it a park, and ratification by compensation each time a monument stays a monument and receives congressional appropriations to pay its staff, whether within the Fish and Wildlife Service, the Forest Service, the National Park Service, or the Bureau of Land Management.

Monuments have been elevated by Congress from monument to park status during all 17 presidencies since 1906, and during each of those presidencies new monuments have been designated—most
of them by the presidents themselves under the Antiquities Act, some by Congress itself. The total had reached 91 before 1978, when President Carter designated his 15th in Alaska. Thus, for more than a century, presidential designation under the Antiquities Act has taken its place within that conservative tradition that gathers wisdom from practice repeated and accumulated.

The First Great Environmental Awakening

The great founders of American conservation stimulated an efflorescence of legislation during the Populist-Progressive Era from 1891 until 1916. In those wondrous years, the nation experienced its First Great Environmental Awakening, of which the Forest Service “Creative Act,” the Organic Act of the Park Service, the Antiquities Act of 1906, the Mineral Leasing Act, and the Federal Power Act of 1920 are among the lasting gifts. That First Awakening, inspired by 19th-century reform, established a conservation tradition animated by a just regard to the experience of predecessors on the land, a due regard to the interests of those that would require it afterward, and an enlarged sympathy for those who need protection within the present generation. The Progressive vision stretched the capaciousness of Americans’ sense of community to comprehend a common interest, extending backward into antiquity and forward toward sustainability in the future. Tradition gives perspective—it imparts time to consider. That is what the Antiquities Act does. That is the reason for its stress upon antiquity. It gives time to consider.

The Second Great Environmental Awakening

The Second Great Environmental Awakening took place concurrently with the Civil Rights Era. Protection for the land coincided with better protection of people in the land. From 1963 through 1975 we took better care of each other as well as the earth.

The Second Great Environmental Awakening gave us an array of measures: the Clean Air Act of 1963, the Wilderness Act and Clean Water Act of 1964, the Land and Water Conservation Fund Act and Solid Waste Disposal Act of 1965, the National Historic Preserva-

The National Landscape Conservation System

President Clinton, urged onward by his Secretary of the Interior, Bruce Babbitt, and that department’s resourceful and preternaturally patient solicitor, John Leshy, designated monuments encompassing deserts, mountain ranges, canyons, forests, forts, reefs, the site of a Japanese-American internment camp in Idaho, and Abraham Lincoln’s summer home on the edge of the District of Columbia. Most of the land area they designated had been under the aegis of the Bureau of Land Management, whose traditional task has been encouraging use, rather than preservation. So, to underscore the need for some new skills, the Clinton-Babbitt-Leshy process provided a National Landscape Conservation System within the Bureau. Not all components of this system are national monuments; it contains conservation areas, rivers, trails, wilderness areas and wilderness study areas.

Plainly, part of the intention behind training a strong set of professionals to serve prehistoric, historic, and scientific education within the National Landscape Conservation System was to make it capable of self-defense against developmental and exploitation pressure. As matters have unfolded, many people in monument-side communities who once opposed monument status are now happily depositing.

Not all history is celebratory. Minidoka Internment National Monument in Idaho preserves for future study and instruction one of the ten “relocation camps” which housed tens of thousands of Japanese-Americans forced from their homes during World War II. Photo courtesy of the National Archives, photo no. 210-G-11G-413 (Records of the War Relocation Authority).
The Great Tradition—
The American Sense of a Past in Place

Monument designation under the Antiquities Act has become one strand in what has become a complex tale of responsible public stewardship going beyond preservation into education. Throughout our history we have set aside learning-places too precious to be parcelled out to private use: the Great Meadow in Concord, so beloved by Thoreau, is such a learning-place. So are Devils Tower and Mound City and the Grand Canyon. So are the village green in Woodstock, Vt., and many another New England villages. So are the plaza in Santa Fe and the Boston Common. These places are all historic places, and if we have eyes to see and ears to hear, they are also objects of science—for science means learning. We can learn in them. And not just of the past. Through the study of past may come clearer understanding of the present.

Strenuous in his optimism as Theodore Roosevelt was, and often buoyantly insistent upon the triumphal side of history, he knew that all history is not celebratory—ruins tell of ruination, of disappointment as well as achievement, of vigor in construction and infirmity in aging, among persons and societies. In cliff-dwellings and mound-bordered plazas there is a record of accomplishment. In their abandonment and emptiness there may be lessons of profound gravity about people and the limits of sustainable settlement. Those lessons are written large at Chaco Canyon, at Bandelier, in every canyon in the Grand Staircase, at Mound City, and

Ruins tell of ruination—of loss and abandonment in places where earlier people had achieved great things. Chaco Canyon in New Mexico was a thriving center of Puebloan culture between AD 850 and 1250. It is still a place of pilgrimage for descendants. Photo courtesy of the National Park Service.
at Poverty Point (a congressionally authorized monument). All these have been preserved for our study by the Antiquities Act, whether they have become National Parks or are still parts of the National Landscape Conservation System.

**Antiquities to Think About**

Following the example of Theodore Roosevelt, the historian-president, let us put a little more antiquity into our own discourse. They and the other leaders of the nation’s First Great Environmental Awakening used what powers they had to preserve forests and magnificent landscapes, bearing in mind that there was much to learn from American antiquity about what happens to people in their interrelationships with nature. They—and we—are not the first Americans to ruminate upon the evidence of people in nature. When they saw ruins, they asked themselves: What happened to the people who once inhabited these places? Had those people failed to achieve a sustainable relationship with nature? What somber tales are implied by empty, ruined towns and empty, ruined fields?

One lesson to be drawn from the evidence of their passage is that humans suffer when they transgress natural limits. Try as we may, we cannot escape that truth. One escape route too often attempted has been to think ourselves too grown up to be so constrained, to think we are now free of limits because we can always find a techno-fix. From time to time, our willingness to learn such truths has been overwhelmed by haste to exploit, by lust for quick riches, and by our own brand of “master race” foolishness.

Our post-urban, post-frontier world is a world in increasing need of tangible reminders of the past to learn environmental truths. Ours will be a world of recycled places, of slowly renewing ecosystems. We will have to take less from the earth—from external resources—and put back more. We will have to re-invest in nature itself more from our intellectual and scientific creativity—from internal resources. Our watchword will become “more from us, less from it”—a watchword we can easily derive from the observation of antiquity and from thinking about its lessons.

---

Roger G. Kennedy is director emeritus of the National Museum of American History and former director of the National Park Service. Portions of this article are drawn from Wildfire and Americans; How to Save Lives, Property, and Your Tax Dollars, Hill and Wang, 2006.
The following discussion took place on June 8, 2006, at the Navy Memorial Museum in Washington, D.C.—exactly 100 years after President Theodore Roosevelt signed the Antiquities Act of 1906. At the invitation of the National Trust for Historic Preservation and the Wilderness Society, individuals who had a role in implementing the act and those who today continue to implement the act gathered to discuss the legacy of the Antiquities Act and share their thoughts on future challenges.

Participants included Richard Moe, president of the National Trust for Historic Preservation; Theodore Roosevelt IV, conservationist and great-grandson of President Theodore Roosevelt; Frank McManamon, chief archeologist, National Park Service; Sarah Schlanger, associate state archeologist, New Mexico Bureau of Land Management; Ruth Lambert, cultural program director, San Juan Mountains Association; Dave Hunsaker, deputy director, National Landscape Conservation System, Bureau of Land Management; Jerry Rogers, Executive Council member, Coalition of National Park Service Retirees; John Leshy, professor, University of California Hastings School of Law and former solicitor, U.S. Interior Department; Sherry Hutt, program manager, National Park Service Native American Graves Protection and Repatriation Act; Elena Daly, director, Bureau of Land Management, National Landscape Conservation System.

Richard Moe set the stage for the day’s discussion by providing some background on why and how the law came to be: “In the early years of the 20th century, many people became alarmed by the rapid and widespread destruction of America’s archeological heritage. Collections of artifacts were being displayed in museums with very little concern for the
context in which they had been discovered. Much of the damage was being done on public land, and the government had very little power to stop it. But the Antiquities Act, passed in 1906, changed all of that. It established criteria and a procedure for authorizing legitimate archeological investigations. It set penalties for stealing or destroying artifacts, and it facilitated quick protection of important resources by means of Presidential Proclamation.”

The Legacy of the Antiquities Act

Over the past 100 years, the Antiquities Act led to the designation of more than 100 national monuments, which delight millions of visitors annually. President Roosevelt’s grandson, Theodore Roosevelt IV, elaborated on the far-reaching impact of the legislation: “The success of the Antiquities Act is perhaps best demonstrated by the fact that presidents have set aside more than 70 million acres of national land as national monuments. We are lucky to be the inheritors of the natural resources that have been bequeathed to us by our forebears, whether we go up to the Arctic National Wildlife Refuge in Alaska or down to the Keys in Florida, from Maine down to Padre National Park.”

Richard Moe noted: “While earlier legislation had protected individual places such as Yellowstone, the Antiquities Act applies across the entire range of federal lands, and much more, it applies to natural, cultural, and historic sites alike. It recognizes that when an important piece of our heritage is threatened, the government must be able to act quickly and decisively to save it, and that’s exactly how presidents have used it.”

Sarah Schlanger observed that while the Antiquities Act has been important for sites

Interpretation at national monuments can ignite public interest in and a shared sense of stewardship for historic places. Shown here, students learn about the Revolutionary War at Fort Stanwix National Monument in New York. Photo courtesy of the National Park Service.
and landscapes, it’s been really important for archeologists. She explained: “Nowadays it’s commonplace—with the passage of the National Environmental Policy Act (NEPA) and the National Historic Preservation Act—to see archeologists working out in the field. We’ve really become kind of a roadside attraction. When I first started in archeology, you knew that when you got out there you might be doing that first intensive survey of a place. Now that’s no longer true. There’s not that much country that hasn’t been looked at by archeologists, not necessarily intensively surveyed, but looked at.”

Frank McManamon stressed the importance of the policy foundation of the Antiquities Act. He commented: “In Section 3, where the permitting of archeological investigations is discussed, the fact is that the purpose of those permits is not to retrieve artifacts for some sort of commercial or personal use; it is to undertake examination with a view to increasing the knowledge of such objects. So right from the start, the value that’s identified with the archeological resources on public land is an education value.”

Looking Pretty Good for a Centenarian

One hundred years later, the law is still relevant to the work preservationists do today. Its title may sound, well, antiquated, but the law itself is not.

John Leshy noted that the Antiquities Act really stands out as unique. “It is an unvarnished good. Its track record is just unbelievably positive. Yet amazingly enough, the act still has a few enemies out there. There are people who want to change it, modify it, say presidents can’t do this without the consent of Congress or add process. To that I would say what Teddy Roosevelt said on the rim of
the Grand Canyon in 1906: Leave it as it is. You can only mar it. You must leave it untouched for your children and your children’s children. I would also say, the act is a muscle, and like most muscles, it needs to be exercised, which means presidents should use it to create more national monuments.”

Richard Moe reminded participants that “there has been occasional grumbling that the president has often locked up too much land and that the power to designate national monuments should be curtailed or vested solely in Congress. That is a very bad idea. As a means of preserving the places that Americans care about, as a tool that has been employed by presidents from one end of the political spectrum to the other, the Antiquities Act has worked well for a hundred years.”

Today’s Challenges

Today, in spite of the law’s rich legacy, many of the special places located on public lands are still threatened—by looting and vandalism, by under-regulated visitation, by increased recreation use, by inadequate staffing, and—underlying all these concerns—by lack of funding.

As a means of preserving the places that Americans care about, as a tool that has been employed by presidents from one end of the political spectrum to the other, the Antiquities Act has worked well for a hundred years.

As one of several speakers lamenting the lack of adequate funding, Theodore Roosevelt IV commented: “I think our generation may be the first in American history that will have bequeathed impoverished public lands to the next generation, and I don’t want to turn to my son and say we failed in our duty.”

Richard Moe remarked that that the biggest threat to the treasures on our public lands comes from our misplaced complacency. He explained: “When they hear that a place has been designated a national monument, most people probably assume that it’s safe, that it will be well cared for forever. Sadly, that just is not necessary true. Designation by itself does not guarantee preservation. Designation is merely one step in a much longer and more complicated and more important process called ‘stewardship.’ Good stewardship is practically impossible without the bodies and the dollars that the job requires, and the fact is that the agencies responsible for stewardship on our public lands have always been hampered by chronic understaffing and underfunding.”

Jerry Rogers observed: “As we celebrate the vast and successful partnerships that have sprung from what the Antiquities Act began, we have to face a terrible truth. People who want to use up, sell off, give away, or grab for themselves the best places still in the public estate have far too much influence on the agencies that are charged with preserving them unimpaired forever. The recent combination of tax cuts and the federal deficit are not an accident. They are not a product of unusual times, or need for economic stimulation, or national emergency. They represent a conscious strategy to convince the public that we cannot afford domestic and environmental programs and agencies such as the National Park Ser-
vice and the Bureau of Land Management. This deficit is used to justify decreased appropriations for such programs and agencies until they are starved into failure.”

Cultivating Partnerships for the Future

As preservationists celebrate the anniversary of the Antiquities Act, they need consider how to best to carry out President Roosevelt’s vision in light of the many changes that have occurred over the past century. Panelists called for more partnerships among agencies, increased public education, and involving local residents in stewardship efforts.

John Leshy explained why such partnerships are vital: “In the last 20 years, there has been an unfortunate tendency to regard monument proclamations as kind of a partisan exercise. Proclamations themselves don’t protect places. They brand an area. They make it easier to fund protection and management, but it doesn’t happen without concerned citizens, without local support from friends groups and volunteers. People have to get involved to really fulfill the promise of the Antiquities Act.”

Sherry Hutt reminded participants that in 1906, when the law was enacted, native peoples were not always regarded as human beings with human rights. She continued: “The concerns of the tribes are not unlike those of many of us—access, sustainable use, and enjoyment of historic monuments. There is a deep sense of cultural and spiritual connection to the natural landscape which must be acknowledged. We need to respect the initial stewards of the land that we inherited.”

She added: “The key to the next century and the key to the future of the Antiquities Act is not amendments in the law, but to construe the act within a contemporary ethic that says you consult with the tribes. These people are integral to our understanding, respect, preservation, and continuity of these monuments. Consultation with tribes on a government-to-government basis is the key to the next century of the Antiquities Act.”

Hutt also suggested exploring the “co-management” approach. She pointed out that tribes have proven themselves to be good stewards of the land in those areas where they have been engaged in partnerships. One of the best examples, she noted, is Canyon de Chelly, which is preserved under Navajo control and in partnership with the National Park Service.

Other partnerships are equally important. Dave Hunsaker discussed the National Landscape Conservation System (NLCS), the division within BLM that has been set up specifically to oversee public lands with significant natural and cultural resources. “Science plays a pivotal role in helping us understand, plan, monitor, and manage the natural resources under our care. Engaging with the scientific and research community enhances partnership opportunities with the private sector and with academia and builds strong bridges. There is no way we can do this alone. Without our partners we cannot hope to accomplish all our goals... this is especially important to what we are currently doing in the field. NLCS is America’s newest conservation system—and these units truly are landscapes of the American spirit.”

Several speakers stressed the need to engage local citizen groups and concerned individuals in the protection of these places. Public education programs, stewardship opportunities, and volunteer work days can help.

Sarah Schlanger com-
mented, “We have to help the public develop a mindset where we’re all stewards of the public lands. We want everyone, not just archeologists, to find themselves in ‘new country’ and learn from the history that’s preserved there as they explore our public lands…. We also need to look hard at public behavior on the public lands. We’d like everyone who comes to the public lands to bear the responsibility for visiting heritage sites respectfully and in non-impacting ways.”

Jerry Rogers also emphasized the importance of reaching out to Americans. He urged: “We need to re-ignite in Americans a sense of responsibility by appealing to everyone’s best instincts by rejecting the notion that greed is good. We’re not just 280 million people walking about in a capitalist economy; we are a community of Americans, and we hold things in common. National treasures are important to us, and if we can re-ignite in people a sense of American community and let them recognize that these are icons of our American community, then I think we can turn things around.”

It seems fitting to end this summary of the day’s discussion with some words of encouragement from Theodore Roosevelt IV. He said: “I believe in the collective will of the American people. If we engage them, we will be successful. In some ways the Antiquities Act in itself is a monument to the genius of the American people, and we need to respect that genius and we need to work within the political system so we can hold our heads higher when we pass this heritage on to the next generation.”

Through the Southwest Colorado Cultural Site Stewardship Program, managed by the nonprofit San Juan Mountains Association, more than 110 citizens with special training monitor more than 115 prehistoric and historic sites on public lands. Site Steward Sue Hinkle, shown with her daughter and a friend, is checking on her assigned prehistoric site in Canyons of the Ancients National Monument. Photo by Kent Rector.
30 Years of Federal Tax Incentives for Historic Buildings

Bradford J. White

The first tax incentives targeting historic buildings were passed by Congress in 1976. This set in motion legislation creating tax credits for the rehabilitation of historic buildings, the “back to the cities” movement, and arguably, the modern historic preservation movement. The first tax incentives, part of a tax bill popularly known as the Tax Reform Act of 1976, gave recognition to the fact that historic buildings are economic assets that have economic value. No previous historic preservation legislation provided this recognition.

Where the National Historic Preservation Act of 1966 gave us the National Register of Historic Places, the Tax Reform Act and its progeny have helped to revive our cities’ urban cores and neighborhoods, suburban downtowns, and commercial districts in many towns and villages across the country. It sparked the creation of a wide variety of other incentives, particularly at the state and local level, including property tax relief for the rehabilitation of historic resources and state tax credit programs that expand and augment the effectiveness of the federal tax credits.

Legislative History

The Tax Reform Act of 1976 provided two incentives to help make the rehabilitation of historic buildings competitive with new construction. The first incentive allowed the owners of income-producing historic buildings to write off rehabilitation expenditures over five years rather than over the life of the improvements, typically 10 to 20 years or more. The second incentive, an alternative to the first, allowed owners undertaking a substantial rehabilitation to accelerate depreciation (write-off of the cost of improvements) on the same schedule allowed for new construction. While a step in the right direction, these incentives did more to start the discussions regarding more-useful incentives than to save and enhance significant numbers of historic buildings.

Only two years later, Congress passed the Revenue
Act of 1978 and with it came the first historic tax credit incentive. The Revenue Act of 1978 provided for a 10 percent investment tax credit on historic commercial buildings that had been in use for at least 20 years. Owners were specifically prohibited from using the five-year depreciation rules with the tax credit, but were allowed to use accelerated depreciation.

Significant changes to the tax credits ensued only three years later with passage of the Economic Recovery Tax Act of 1981 (ERTA). This tax initiative created a 25 percent investment tax credit for the substantial rehabilitation of certified historic structures and eliminated most of the depreciation incentives developed in previous legislation. ERTA introduced the concept of “certified” historic structures—any building individually listed in the National Register of Historic Places or buildings located in National Register districts that were certified by the National Park Service as contributing to the historic significance of the district. Buildings located in state or local districts could also qualify as “certified” if the ordinance creating the district was approved by the National Park Service. Also, ERTA introduced a variety of other tax credits, ranging from 15 to 20 percent, depending on the age (at least 30 years old) and use of the building (office, residential, hotel, etc.). Unfortunately, the tax credits and other changes under ERTA fueled rehabilitation projects (and other real estate development projects) that were about tax benefits and not sound economics. As a result, the tax credits came under great scrutiny and were, in many ways, a victim of the tax revolution of the Reagan Administration.

Just five years later was the “tax revolution” known as the Tax Reform of 1986. Much
of the federal tax code was changed under the Tax Reform Act of 1986—tax rates were significantly reduced, income was characterized in different ways for purposes of taxation, and the rehabilitation investment tax credit was reduced from 25 percent to 20 percent. While substantial, the reduction in the size of the credit was not as significant as the addition of the provisions that characterized income as active, passive, and investment. The characterization of real estate income and losses as passive for a large portion of real estate investors severely limited the amount of the credit available to a taxpayer. Tax credits for non-historic buildings, introduced in ERTA, were simplified to 10 percent for buildings constructed before 1936. Depreciation schedules for real estate were changed to better reflect the actual useful life of buildings.

No major changes have been made to the tax credit in 20 years.

Long-Term and Wide-Ranging Impact

Since its inception, tax credits have produced more than
$35 billion of preservation activity, with about 32,800 projects. Interestingly, use of the tax credit increased nearly six-fold between 1977 and 1985. The number of projects peaked in 1984–85, one year prior to the tax law changes. For the next decade, through 1996, annual use of the tax credit fell or stayed flat. Annual use of the credit has never reached the numbers attained during the early 1980s. For example, in 1984 there were more than 3,000 approved projects compared to just over 1,100 in 2005. Still, while investment in tax credit projects remained at annual levels between approximately $500 million and $1 billion for the decade following the changes to the tax credit laws, down from its 1985 peak of nearly $2.5 billion, investment has surged in recent years. Total investment in 2004 and 2005 exceeded $6.5 billion.¹

The surge in the investment in tax credit projects and the steady use of the credits indicate that property owners and investors have learned to deal with many of the limitations of the tax credit.

The use of the federal rehabilitation tax credit has led to the revitalization of the historic cores of our cities, suburbs, and towns throughout the country. It has contributed to the advent of the 24/7 city and a vibrant mix of uses. Once unthinkable, downtowns are being transformed from places solely of business and commerce to the centers of entertainment, residential living, and education. These changes are not focused on the largest of our cities or our smallest. Instead this transformation stretches from east to west and north to south, from our largest cities to our suburbs and many small towns. The revitalization of our cities, suburbs, and towns started with the rehabilitation of historic and older buildings using the rehabilitation tax credit. It is the model used in every city. New construction follows the rehabilitation of historic buildings.

A wide variety of incentive programs have been developed to augment the federal historic rehabilitation tax credit. The preservation easement incentive was part of the Tax Reform Act of 1976, preceding the creation of the rehabilitation tax credit. Only in the past decade has this incentive been used to its full potential. Many state and local incentive programs were developed to provide preservation tools in addition to the tax credit. These include property tax relief in the form of abatements or freezes, flexible zoning and building code administration, and tax increment financing. However, the newest trend in incentives is the development of the state tax credit. Many of the state tax credit programs mirror the federal rehabilitation tax credit, though most, unlike the federal credit, allow the state credit to be used for the rehabilitation of single-family homes.

A Closer Look at State Tax Credits²

Tax credit programs ranging from 10 percent to 50 percent of eligible rehabilitation
Expenditures have been developed in 28 states. Unlike the federal tax credit, which is limited to income-producing buildings, nearly all of the state programs provide for a tax credit incentive for owner-occupied residences.

Most states restrict the use of the tax credit either by capping the overall amount of the credit available statewide and/or by capping the amount of credit that can be taken on any given project. Often, this significantly limits the effectiveness of the credit. Further, the wide range of tax rates among the states affects the value of the credit. In a very low-tax-rate state, the taxpayer may never get full advantage or use of the eligible tax credit amount. Another factor that may curtail the use of the state tax credit is transferability. The lack of sufficient state tax liability and the inability to transfer the credit can hinder the use of the state tax credit.

In spite of the constraints of many state tax credit programs, development of these programs has been positive. Just as the early federal legislation did more to raise the awareness of policy makers than provide effective incentives, the state tax credit programs have raised the level of awareness both of historic preservation and of federal and state tax credits. And despite the notable limitations, many of the state tax credit programs have enjoyed significant use.

Enhancing the Federal Historic Rehabilitation Tax Credit

Since 1986, the National Trust for Historic Preservation, Preservation Action, the National Conference of State Historic Preservation Officers, the National Alliance of Preservation Commissions, the Historic Preservation Development Council, the National Housing and Rehabilitation Association, and other preservation advocates have discussed changes to the existing rehabilitation tax credit that would expand the universe of building types eligible for a federal historic rehabilitation tax credit or make the credit more useful to individual investors. Many have sought legislation to exempt the tax credits from the passive loss rules so that developers of smaller projects could take advantage of the tax credits. Still others have sought to expand the rehabilitation tax credit or a similar credit to make it available to support the rehabilitation of owner-occupied housing—single-family homes and condominiums.

The Community Restoration and Revitalization Act (HR 3159) was introduced in Congress in 2005 to address these and other issues. The following is a summary of its major provisions:

- Improve the combined use of the Low Income Housing Tax Credit (LIHTC) and the Historic Rehabilitation Tax Credit by eliminating rules that result in the lowering of the amount of the LIHTC available for the project.
- Reduce the loss of tax benefits that occurs on a dollar-for-dollar basis according to the amount of credit taken (depreciation adjustment).
- Increase the historic rehabilitation tax credit from 20 percent to 40 percent for projects under $2 million. The purpose is to make the credit more worthwhile for smaller projects where transaction costs can quickly reduce the value of the total available credits.
- Make the 10 percent credit that is currently available for the rehabilitation of “older buildings” more consistent with the 20 percent credit by making it available for rental housing and changing the definition of “older building.”
from “built before 1936” to any building “50 years old or older.”

• Change the nonprofit use provisions to allow community-oriented projects to move forward and take advantage of the tax credits.

• Increase the qualified rehabilitation expenditures to 130 percent of eligible expenses in the most difficult to develop and disinvested areas.

• Expand use of the historic rehabilitation tax credit to the development of condominiums by eliminating the pay-back (recapture) of tax credits upon conversion to condominium.

The proposed changes would certainly enhance the toolbox of incentives that are already available. The effect of the changes would depend on a variety of factors. For example, improving the combined use of the LIHTC and the historic rehabilitation tax credit is desirable. However, the LIHTC’s are allocated on a project-by-project basis through a competitive process based on need. The proposed change will increase the available eligible expenses for purposes of determining the allocation but will not necessarily bring more resources to the project. Use of the rehabilitation tax credit will act to reduce the LIHTC allocation.

Limited resources have forced allocating agencies and many in the affordable housing industry to choose least-cost alternatives for the production of affordable units. Perceptions (and some realities) regarding the cost of historic rehabilitation projects have caused some to favor new construction over rehabilitation.

Changing the tax credit available for small projects will likely spur projects in smaller towns and rural areas. But rehabilitation projects in these locations can be costly. It would probably be more effective if the ceiling were raised to $5 million. Alternatively, the definition of an eligible project should be increased to approximately $5 million while restricting the increased credit to $2 million of eligible expenses. This would expand

The federal historic rehabilitation tax credit is helping to finance the conversion of a cluster of tobacco storage and processing buildings in downtown Durham, N.C. (c. 1905) into high-quality laboratory and office space that will serve the needs of the region’s biotech industry centered in nearby Research Triangle Park. Photo courtesy of the National Trust Community Investment Corporation.
the number of projects eligible for the enhanced credit while limiting the amount of credit used in the project.

Other enhancements to the existing tax credits could also be proposed. Efforts were previously undertaken to create a federal tax credit for the rehabilitation of historic single-family homes (Historic Homeowner’s Assistance Act). These efforts should be renewed and be targeted to difficult to develop neighborhoods. Use of a tiered credit system based on census tract demographics should be considered as a way to get larger incentives to areas that are in more desperate need of reinvestment.

More must be done to promote the rehabilitation of historic buildings as a vital aspect of sustainable development. Rising fuel costs, diminishing natural resources, and the realities of global warming have served to bring attention to the need for sustainable development. Historic preservation is one of the best examples of sustainable development because it calls for the reuse and recycling of existing materials. In addition, historic buildings are frequently located near mass transportation corridors and are within walking and biking distance of residential areas. Enhanced tax credits for historic rehabilitation that incorporates solar and wind technology, energy efficient mechanical systems, green roofs, and other sustainable development technologies must be considered.

At the same time, it must be recognized that it is more efficient to maintain many existing building envelope features such as windows. For example, there is very little to be gained by removing extant window systems and replacing them with double-glazed low-E window systems. Comparisons of heat gain and loss of older window systems indicate that infiltration is primarily a result of poorly fitting sashes and frames, which can be easily remedied by use of weather stripping and other conventional products. The benefits, if any, of changing windows do not outweigh the detriment of significantly altering the facades of our historic buildings.

The incentives introduced 30 years ago have had an overwhelmingly positive impact on the preservation of historic structures throughout the country. Reflecting on where we have been indicates that there is much left to do not only to improve the benefits of the historic rehabilitation tax credits but to communicate the benefits of retaining our historic resources.

Bradford J. White is vice president of LR Development Company LLC. Since its inception in 1988, LR Development Company has been a leading Chicago-based developer of landmark residential and commercial properties, including historic renovations, new construction, and affordable housing. In 2002 LR Development Company received a National Preservation Honor Award for the rehabilitation of the Cleveland Arcade.

Notes
3 Adapted from websites of the National Trust for Historic Preservation (www.nationaltrust.org) and Preservation Action (www.preservationaction.org).