Fifty Years of Heritage
So Rich: The National Historic Preservation Act
The Unfulfilled Potential of the National Historic Preservation Act

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Much has been written, and more is sure to come, about all the good that the National Historic Preservation Act (NHPA) has done. I don’t dispute the belief that it has done good things, but it could have done much better things if we—that is, we who think that something like the NHPA is a good idea—had had the necessary vision and the chutzpah. Maybe it still could.

When I first learned of the NHPA’s then-imminent enactment, I was an undergraduate anthropology student working in “salvage archaeology”—digging Native American sites about to be destroyed by federal construction projects, with minimal funding from the National Park Service (NPS). I was excited by the NHPA, particularly its Section 106. It seemed as though it might make it possible for people like me to influence project planning and maybe save important sites, rather than just scurrying to excavate them after project planning had doomed them.

In the first few years after the NHPA became law, my perception of its potential broadened. Of course I learned that archaeology was of little concern to the law’s drafters—their preoccupation was with historic buildings and structures. But I also became involved with a couple of Indian tribes in California—the Agua Caliente Band of Cahuilla and the Dry Creek Band of Pomo—who were trying to keep their ancestral sites and landscapes from being destroyed by federal projects. I came to realize that Section 106 was a tool they could use.

In working with the tribes, I came to know some of the people who had been responsible for the NHPA and who were working to implement it. Notably, I met Robert R. Garvey Jr., one of the law’s drafters and then executive director of the Advisory Council on Historic Preservation (ACHP). In my first Section 106 meeting, after I had made my pedantic pitch for saving the archaeology of the
Agua Caliente Band’s Tahquitz Canyon, Garvey said that was all very interesting, but he wanted to hear what the Indians had to say. Then and later, as I worked with Garvey and his colleagues on cases in New England, Micronesia, California, Puerto Rico, and all points in between, intervening (albeit with limited success) to try to stop the destruction of places ranging from Detroit’s Poletown to New York’s Helen Hayes Theater, from Hawaii’s Kaho’olawe Island to the Apollo 13 launch tower at Cape Canaveral, I learned that historic preservation is not really about old buildings and sites, or even, in a strict sense, about preservation. It’s about respecting living people and the values they ascribe to places. It’s about trying to help people and communities fend off the damage to their emotional ecosystems that comes from the loss or transformation of places intrinsic to their history and culture—national culture, tribal culture, ethnic group culture, local community culture, neighborhood culture, interest group culture, or sexual orientation culture. It’s about respecting people’s attachment to place.

That is the unfulfilled potential of the NHPA—to create and maintain a system by which people and communities can work effectively to maintain their intangible, emotionally freighted cultural heritage and by which government can be made to respect that heritage—though not necessarily to “preserve” its leavings in the narrow sense of the word. I believe that that’s what the authors
of the NHPA intended, and that, thus far, we’ve failed pretty miserably at carrying out that intent.

At the core of the matter is something that Garvey taught me: historic preservation is not intended to benefit old buildings, archaeological sites, or even “traditional cultural properties” for their own sakes. As far as we know, real estate is not sentient; buildings and sites don’t care whether they’re preserved or not. People and their communities want to preserve environments that they care about, and it’s those people and communities that historic preservation should serve. Communities certainly include those composed of professional and nonprofessional architectural historians and archaeologists, but it’s the people who live their heritage and are sustained by it—given “a sense of orientation” by it, in the words of the NHPA—that the law is designed to respect and benefit.

The heritage that people most care about is not always a “district, site, building, structure, or object.” Or if it is such a piece of real estate, it is not necessarily one that tickles the fancy of a “preservation professional.” As University of California at Berkeley landscape architecture and environmental planning professor Randolph Hester has discovered, a gravel parking lot may be one of a community’s most valued places.

Human heritage—whether embodied in real estate or not—is not always amenable to being captured in lists and list-based documentation; it’s not always easily bounded. It varies through time and across interest groups, and its “objective” physical characteristics may be a lot less important than how it is perceived and valued. As a result, respecting heritage in planning and government decision-making doesn’t necessarily require that it be thus documented.

Given all of this, we ought to use the NHPA as a basis for systems that would ascertain what aspects of the environment people and communities care about, and empower them to make sure that these aspects are respected—notably by limiting the forces of government and industry that are inclined to run them over roughshod.
Yet, what we have built using the NHPA is a system that ignores all parts of the human environment that don’t fit on the National Register of Historic Places, which is made up only of districts, sites, buildings, structures, and objects, each one vetted by preservation professionals based on detailed documentation—accompanied by a byzantine federal-state bureaucracy devoted to expanding and maintaining the register. This has provided fertile ground for the growth of a for-profit consulting industry the profits of which are often dependent not on preserving anything but on facilitating destruction. Its practitioners are expected to ignore impacts on cultural places that they find don’t meet narrow technical criteria, regardless of what citizens think who care about such places. We have created a monster.

I can hear the objections: The National Register is our “official list of the Nation’s historic places worthy of preservation.” It’s the centerpiece of the national historic preservation program. NPS and ACHP officials and state historic preservation officers (SHPOs) are not mere bureaucrats, they’re heroic (though downtrodden) defenders of the nation’s heritage working alongside consultants who are bound by codes of ethics.

Yada yada yada. Keep patting yourselves on the back, colleagues. It’s easier and more comforting than facing up to challenges.

Some of my best friends are preservation bureaucrats; I used to be one myself. I don’t doubt that many are well intentioned and try hard to do good work in the face of serious obstacles. The same goes for many who labor in the for-profit consulting business. But the system in which they work stifles them.

Why? Because that system:
1. Elevates paperwork, box-checking, and product counting above actually accomplishing anything—emphasizing attention to technical administrivia over confronting serious issues;
2. Rewards following directions over creativity;
3. Systematically selects people as program managers and experts based not on their ability to ascertain and help address citizen concerns about heritage matters, but on meeting narrowly defined standards for practice in the various “preservation disciplines”;
4. Is so opaque to the public that few even know it exists (hence there’s little chance of building public support);
5. Shrinks from conflict rather than seeking creative solutions;
6. Does little to give voice to people whose heritage is routinely trampled by the developers and other change agents who profit from the trampling; and underlying it all—
7. Demands (meekly) respect only for chunks of real estate appreciated by the preservation specialists who staff the SHPO offices and consulting firms.

To paraphrase the trenchant words of the 1994 *Guidelines and Principles for Social Impact Assessment*, the system denigrates what counts and elevates what is easy to count. By so doing, it allows what counts to be ignored and destroyed.

**FUNDAMENTAL FLAWS**

Why is the NHPA program like this? Largely because it’s administered primarily by the NPS. The NPS is fine at managing national parks (at least big rural ones) but has never given serious thought to the quite different challenges of a non-park historic preservation program. A national park is a secure environment under the control of the government in which a limited range of human activities can be permitted. I know that’s an oversimplification, but still—for complexity and the task of responding to multiple interests and needs, a national park doesn’t hold a candle to a city, county, parish, or Indian tribe. Many of those interests and needs simply have no counterparts in a national park context—and vice versa. But naturally and understandably, it’s by being knowledgeable about and supporting the management of national parks that one advances in the NPS—not by learning to work with multiple stakeholders and the fluid, changing cultural values of non-park communities. Particularly in the last 35 years—since the Carter administration’s well-meant but ineffective effort to pull non-park functions out into a separate agency—the NPS has vigorously worked to meld its park and non-park responsibilities and personnel into a single fabric. It hasn’t worked and can’t work; it ought to be abandoned.

The second and related reason that the NHPA system has not fulfilled its potential is that everything is built around the National
Register. The register has played a domineering role as the unchallenged centerpiece of U.S. cultural heritage management. By promoting listing on the register as the *sine qua non* of NHPA implementation (even 40-plus years after Richard Nixon’s Executive Order 11593 made it effectively superfluous for many planning and impact assessment purposes), by demanding massive documentation to justify viewing any place as eligible for the register, and by privileging the views of preservation professionals over those of citizens and their communities, we have leant the register an unearned pretense of ultimate authority over the nation’s cultural heritage.

Despite earnest expressions of support for diversity, minority involvement, and sensitivity to multiple cultural values, the NHPA program remains what it has been since its inception—a program developed by white, male, NPS architectural historians with cultural roots in the eastern United States, designed to list, honor, and document the buildings and structures that *they* consider important. Others are welcome to play the National Register game, but only by the procrustean rules of the NPS establishment.

**TIME TO RETHINK AND REFRESH**

We need a reset. We need to set the existing NHPA program aside—not cancel it (as if we could) but stop treating it as something god-given with which we can only tinker—and put some serious thought into how we can, without preconditions, best carry out the NHPA’s purposes—to preserve “the historical and cultural foundations of the Nation ... as a living part of our community life and development in order to give a sense of orientation to the American people.”

Here are a few starting suggestions:

- Let’s consider whether we still need a National Register or whether it has come to be an impediment to thoughtful, responsible, flexible cultural heritage management. Does the very use of a permanent national list impede considering what is really important to people about their heritage? Does it prevent engagement with people and communities? Is it a crutch that we no longer need?
- If we do still need the National Register in some form, let’s think about how it can be made both more inclusive and more
selective—recognizing that “districts, sites, buildings, structures, and objects” may not be the be-all and end-all of the nation’s heritage, and at the same time, that a respect for cultural heritage doesn’t demand that we cogitate endlessly over, and invest in, every industrial complex or housing tract that’s more than 50 years old.

Let’s try to make the program—with or without the register—more understandable to the public and make it relate more readily to public concerns about the quality of the cultural environment. Overhaul all the regulations, standards, guidelines, bulletins, and briefs with this in mind, including all the strictures and directions imposed on SHPOs, Tribal Historic Preservation Officers, and Certified Local Governments.

Let’s try seriously to control the pernicious dominance of for-profit historic preservation, “cultural resource management,” and environmental planning firms hired by developers and other would-be change agents.

Let’s try to keep the lawyers under control. Lawyers are necessary, but they need to be prevailed upon to work with others to make wise policy, to write good laws—not dictate what policy and law must be.

Let’s put somebody other than the NPS in charge. Let the NPS manage parks—that’s what it’s good at doing. Turn NHPA program management over to someone, something else. Jimmy Carter’s effort to create an agency to perform non-park cultural and conservation work was swept out of existence by the Reagan administration; maybe it’s time to dust that idea off—or think of something better.

Let’s do all these things in active collaboration with the environmental and land-use planning groups—and the tribes, property owners, and property rights organizations whose interests often coincide or overlap with ours, but who—because of our own self-centeredness—scarcely know we exist or think that all we do is dust furniture in house museums.

The NHPA was one of the populist seeds planted by Lyndon Johnson to nurture a relationship of mutual respect between
citizens and government. With the best of intentions, we have let it grow into a tangled, unhealthy thicket of self-congratulation, self-protection, self-advancement, and tedious paper-shuffling. It’s time and past time to refresh its roots and prune its overstory. FJ

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This article has benefitted from comments by Judy Scott Feldman, Jeremy Wells, and Claudia Nissley, but none of them bear a shred of responsibility for it.

1 Mindy Thompson Fullilove, Root Shock: How Tearing Up City Neighborhoods Hurts America, and What We Can Do About It (One World/Ballantine, 2005).
2 Yi-Fu Tuan, Space and Place: The Perspectives of Experience (University of Minnesota Press, 1977).
3 I do have animist friends who would disagree.
4 National Historic Preservation Act, Section 1(b)(2).
6 National Historic Preservation Act, Section 1(b)(2).

TAKEAWAY
Learn the basics about Section 106.

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Read the Forum Blog series on Section 106 and Section 110.