



# Historic Leasing in the National Park System

Preserving History Through Effective Partnerships

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# Executive Summary

The National Park Service is responsible for maintaining over 27,000 historic and prehistoric structures located within the National Park System. From this number, there are approximately 9,600 historic buildings, of which approximately 8,250 are not operated by concessioners. This leaves the National Park Service with the responsibility to maintain over 8,000 historic buildings independently or to authorize their use and maintenance by non-federal parties.

For decades, federal appropriation levels have been insufficient to keep up with the maintenance needs for these historic resources. As a result, the National Park Service's maintenance backlog has grown to unprecedented size and reached near crisis levels. Recent estimates provided by the Park Service value the deferred maintenance backlog at approximately \$11.5 billion. Of that deferred maintenance amount, approximately \$4.5 billion is attributable to the unmet needs of historic and prehistoric structures in the National Park System that are listed on the National Register of Historic Places. This includes 2,811 historic buildings that are currently listed in poor condition. Government funding alone has been insufficient to address this crisis and the assistance of non-federal funding partners is unequivocally necessary. The National Park Service has the legal authority to enter into historic leases and cooperative partnerships with non-federal partners. Leasing historic buildings provides opportunities for the National Park Service to leverage private financial resources to maintain these public resources for future generations.

Across the country, a number of National Park Service units have successfully used leasing to maintain and revitalize historic structures and open them to innovative new uses. However, other regions have been slow to use these tools for a variety of reasons, including a perceived lack of legal authority, a lack of clarity in National Park Service leasing policies, and a lack of information about the range of public-private partnership opportunities. This Report identifies some of the barriers that are currently preventing full use of these important preservation tools, describes examples of the successful use of leases within Park Service units and provides recommendations for moving forward more effectively.

The information and recommendations found in this Report were developed through interviews with National Park Service personnel and research into existing historic lease and partnership agreements at historic sites nationwide. An extensive review of federal laws and policies addressing historic leasing was also conducted to identify roadblocks and conflicting directives that should be addressed by Congress or through regulation or policy changes.

Our recommendations emphasize efforts to simplify procedures, improve clarity, and remove obstacles to historic leasing that currently exist. The recommendations also suggest ways to sharpen the focus on the importance of preservation and to improve the management structures and allocation of responsibilities

within the National Park Service in ways that would facilitate greater use of historic leasing. Recommendations include:

1. Adopt a Preservation First policy approach that values the preservation and use of historic and cultural resources on an equivalent footing with the conservation of natural resources.
2. Undertake a thorough review of the intersecting laws, regulations, policies, and procedures governing the National Park Service's historic leasing program to identify and address inconsistencies, contradictions and areas of confusion. Particular care is needed to ensure that there are clear standards to determine when a concessions agreement is required by law or when the NPS has discretion to decide that a lease is more advantageous.
3. Review and streamline the appraisal and re-appraisal process used for historic leases to remove unnecessary obstacles.
4. Review and consider whether the current policy preference for leases of the shortest term possible is appropriate.
5. Require all structurally sound historic buildings to be put into active use by the NPS or offered for lease within a specified time period.
6. Take action to ensure the broadest possible use of the Federal Historic Tax Credit.
7. Explore options to increase the availability of funding for administration of the Park Service's leasing program. Provide financial support to fund staff training and administration of a larger leasing program. In many parks or regions, more technical skills are needed before a more robust leasing program can be implemented.

Urgent action is needed to meet the growing challenge of the maintenance backlog for historic structures. The Report's recommendations are focused on enhancing and supporting the ability of the National Park Service to meet its stewardship responsibilities to maintain historic structures for the use and enjoyment of the American people. While the maintenance needs are large and growing, this challenge presents the National Park Service with an opportunity to enhance its role as a leader in preservation through adopting more flexible and innovative approaches to conserve historic resources in the National Park System.

## I. INTRODUCTION

The National Park Service was established by Congress in 1916 “to conserve the scenery and the natural and historic objects” located within our National Park System and to manage park resources in a manner that preserves them “unimpaired for the enjoyment of future generations.”<sup>1</sup> Today, the National Park Service is responsible for managing 401 units within the National Park System, including national parks, historic sites, preserves, lakeshores, seashores, monuments, wild and scenic rivers, trails, battlefields, military parks, national recreation areas, memorials, and parkways. The scale and variety of resources found within these units has grown significantly since the National Park Service was founded. While the Park Service’s resource management capacity has also grown, the system’s maintenance needs far exceed the availability of existing financial resources. As a result, many historic sites and structures within the National Park System are in dire need of preservation and maintenance, but have been left to deteriorate.

The existence of a maintenance backlog within the park system—particularly for historic sites—is a longstanding issue that has been identified by the National Park Service itself as well as by nonprofit park advocates. In its 2011 State of America’s National Parks Report, the National Parks Conservation Association identified the growing backlog in maintenance needs for historic and cultural properties as one of the most significant management issues facing the National Park Service.<sup>2</sup> According to the report, only about 40 percent of the historic structures located within the park system are currently in good condition.<sup>3</sup> The lack of adequate funding to cover maintenance needs was identified as the primary cause of the maintenance backlog. While increased congressional appropriations would certainly help to address this issue, in the current era of tight budgets and fiscal constraints, an increase in government funding on the scale necessary to clear the backlog is unrealistic. Unless new non-governmental funding methods are identified to support preservation of these historic structures, the National Park Service’s maintenance backlog will continue to grow.

To fulfill its congressionally mandated stewardship responsibilities, the National Park Service must fully use its existing authority to work with non-federal entities to find alternative funding solutions. Congressional support for this approach has long existed, as demonstrated by the grants of authority to enter into public-private partnerships and historic leases that Congress has extended to the Park Service and other federal agencies over the years. Very recent evidence of this support can be found in the FY12 Conference Report for the Interior, Environment, and Related Agencies Appropriations Bill which stated:

“The Committee encourages the Park Service to pursue the use of cost-effective, innovative solutions like historic leases when practical and when the arrangement comports with a park unit’s enabling legislation. These solutions can help mitigate a growing backlog of historic structures in need of preservation.”<sup>4</sup>

Congress's commitment to pursuing historic leases as a management option was further confirmed by the inclusion of this same language in the joint Conference Report submitted with the 2012 appropriations bill.<sup>5</sup>

Even with the availability of leasing authority and congressional encouragement, the National Park Service has struggled to fully use its authority to meet its mandate to preserve historic structures and cultural resources. Barriers to full use of this authority—including unduly restrictive policy interpretations or statutory and regulatory hurdles—have often stood in the way. Despite these obstacles, there are numerous examples where historic leasing and public-private partnership agreements have been used to authorize non-federal entities to operate businesses, provide housing, manage event spaces, and provide other services in historic structures within the National Park System. In many cases, the involvement of non-federal entities has meant the difference between preservation and reuse, or deterioration and neglect, of irreplaceable historic resources. The American public has directly benefited from these private investments through increased opportunities to enjoy historic properties that otherwise would have been unavailable. Despite successful examples of historic leasing being used to rehabilitate historic structures in almost every National Park Service region, some superintendents have not used the Park Service's leasing authorities. Other issues, such as a lack of leasing expertise, staff capacity, and uncertainties over interpretations of policies also stand in the way.

The purpose of this report is to provide the National Park Service and its many partners with actionable recommendations that, if implemented, would increase the use of historic leasing in the National Park System. The report begins with a discussion of policy interpretations that are impeding the full use of historic leasing by some park administrators. The next section of the report provides an overview of the statutes and regulations that govern the use of leases, concessions agreements, and other use authorization methods within the park system. This section includes a discussion of areas where confusion and perceived conflicts between law and policy are inhibiting greater involvement by non-federal partners. The report concludes with a discussion of specific recommendations that could increase the use of historic leasing. A collection of case studies is included in an Appendix at the end of the report. The case studies provide context and a closer look at specific examples of the underlying issues standing in the way of additional leasing. The success stories in many of the case studies clearly illustrate the value that leasing can contribute to managing historic resources. The National Trust is convinced that expanded use of historic leasing will enhance the National Park Service's ability to manage and maintain the elements of our shared history that are entrusted to its care.

## **II. UNDERSTANDING THE POLICY CONCERNS**

In researching this report, three unwritten policy challenges were identified as contributing to the underutilization of historic leasing in the park system. First, and most significantly, National Park Service personnel voiced concerns about limiting full public access to historic sites or structures managed under lease

agreements. Second, some park superintendents make decisions that prioritize other park uses over preservation of cultural resources, including deciding to manage historic sites in a state of advanced disrepair as ruins rather than investing scarce resources in rehabilitation or preservation. And finally, there tends to be a preference for focusing preservation efforts on resources that are integral to the historic era that is the park's primary interpretive focus. Often this issue arises where historic resources are not included in park planning documents or are not specifically mentioned in a park's enabling legislation. Allowing cultural resources to deteriorate based on any of these concerns conflicts with the National Park Service's conservation and preservation mandate.

#### **A. PUBLIC ACCESS RESTRICTIONS**

Private use and management of National Park Service assets, whether managed through lease agreements, concessions, or other use authorization methods, has long been a source of tension in park resource management decisions. All too frequently, the Park Service is granted management authority over large areas of parkland without receiving a level of funding commensurate with the scale of the park's operational and maintenance needs. To meet its management and conservation responsibilities in these circumstances, the Park Service has sometimes looked to work with non-federal partners. This has required the Park Service to make decisions that balance the need for access to publicly owned property with the needs of private interests that are funding the maintenance of the public property. Unless this balance can be struck, private investment in public property—investment that is necessary to fully meet all the National Park System's maintenance needs—will not achieve its potential to support and promote the use and enjoyment of our national parks.

The National Park Service needs to become more comfortable making public access decisions recognizing that different levels of public access can be appropriate at different sites. The Park Service can maximize opportunities for public access, and ensure that an appropriate level of public access is available at all park sites, without prohibiting private uses. Currently, there are no legal or policy restrictions in place that prohibit the Park Service from making a range of public access decisions based on site-specific determinations.<sup>6</sup> The Park Service needs to embrace this flexibility to maximize public access where appropriate and to limit public access for sites that will not survive without reasonable public access limitations.

There are strong precedents within the Department of the Interior and the National Park Service to support the use of site access limitations as a means to ensure site protection. In the environmental protection context, limiting access is a well-recognized principle of conservation management. Agencies routinely limit the number of permits granted to backcountry hikers, hunters, and anglers to manage the impact of human activity on protected federal resources. Placing reasonable limitations on access to finite resources helps to ensure the long term conservation of resources for the benefit of everyone. Extending this concept to historic site preservation is necessary and should be noncontroversial. Just



as natural sites can be “loved to death” by overuse, historic sites can be “loved to death” by requiring constant, full public access to sites that may be fragile or need private support to ensure their continued preservation. Reasonable access limitations needed either to preserve historic sites from overuse, or to secure private investment to fund maintenance expenses for sites that would otherwise be left to deteriorate to the point of no return, are an important management tool available to the Park Service.

There are numerous examples where the Park Service has made decisions authorizing different levels of public access. For example, in Atlanta, Georgia, the Martin Luther King, Jr. National Historic Site includes a large number of federally owned historic homes. Several of the homes are used to house park staff, one is leased commercially and operated as a barber shop, and still others are used by nonprofit organizations, including a church, through public-private cooperative agreements. The remaining 29 houses are rented for private residential purposes. Of these houses, those used to house park staff and those leased for private residential purposes are closed to the public. Visitors to the site enjoy the homes by walking down streets where the historic look and feel of the streetscape is well-preserved, but interior access is not available. At the same time, public access to the barber shop is available to anyone in need of a haircut, and access to the homes operated by nonprofit organizations is also widely available. By managing these publicly owned buildings to allow private use—sometimes exclusive private use—the Park Service has been able to maintain all of the federally owned buildings with the income from the leased properties. If park administrators had taken a different approach and attempted to make each of these houses completely open to the public, it is hard to see how the site could be self-sustaining; instead, the site would likely be contributing to the Park Service’s maintenance backlog.

The Chesapeake & Ohio Canal National Historical Park provides another example where the Park Service has made different public access decisions for different park resources. The towpath that runs the length of the park is free and open to the public. The lockhouses stationed at regular intervals along the path are primarily closed to the public, while a few are open for visitor interpretation purposes. The approximately 1,300 other historic structures located in the park are generally closed to visitor access as well. In a unique attempt to open more of these structures to the public, the Park Service partnered with the C&O Canal Trust to rehabilitate several lockhouses and open them as vacation rentals to the public. The C&O Canal Trust performs all of the active management functions for the program and guests are charged a rate between \$100 to \$150 per night depending on location and amenities.

The Cape Cod National Seashore also provides a wide range of public access options to different park resources. The park recently completed a planning process to determine the best use of its dune shacks, and determined that 40 percent of the shacks will be set aside for private long term residential leases, 40 percent will be operated in cooperation with nonprofit organizations, and 20 percent will be set aside for medium-term leases for residential or nonprofit

organizational purposes. Within these different categories, the Park Service will require lessees to allow varying degrees of public interior or exterior access at scheduled times. Also within the park, the historic Ryder House is currently held under a 40 year private residential lease that includes no public access to the House's interior. In making this leasing decision to exclude all public interior access, the Park Service determined that the public interest was served by ensuring that the house was maintained and that park visitors were able to appreciate the "setting enhancement" its preservation provides. Additional examples, where reasonable limits to public access have been used to ensure that park resources are preserved and managed more effectively, can be found throughout the National Park System.

The Park Service has faced criticism in the past about management decisions that limited public access to federally owned property. One very prominent example was the Park Service's issuance of Special Use Permits (SUP) to authorize the operation of beach clubs in the Gateway National Recreation Area in New Jersey. The Silver Gull Beach Club and Breezy Point Surf Club were authorized to run private beach clubs in the Jamaica Bay unit of the park. A 2007 Inspector General's report<sup>7</sup> investigated operations at these sites and found that these clubs operated for over thirty years under SUPs that were renewed periodically without providing any mechanism for competition.<sup>8</sup>

In addition to improper authorization outside of a competitive bid process, these two clubs were found to engage in practices that may have improperly limited public access to the seashore. The clubs' operators erected monitored gates that could prevent public access to the beach, when access should have been freely available to all park visitors. An additional concern raised by the Inspector General's Report was the clubs' membership fee structure. The Silver Gull charged \$2,215 and Breezy Point charged \$1,800 as minimum annual membership fees for a family of four. While memberships were open to anyone who completed an application and paid the fee, this financial barrier placed a substantial limit on public access to the club's facilities, and there was no option for paying a reduced fee for day use only.

Following issuance of the Inspector General's report, the Park Service took action to remedy these issues. A concessions contract for the sites was issued for competitive bidding. A new operator assumed management of both sites under a 10 year concessions agreement. Extensive maintenance and repair work was conducted before the clubs were re-opened under new management in 2012. Although season-long access to the clubs is still available only to those able to pay an annual membership fee that is approved by the Park Service under the concessions agreement, there are now more affordable options for single day passes, and access to the public beach has been improved.

While it is clear that the Park Service's management of these beach clubs violated law and policy for many years, it is important not to allow this and similar examples to deter the appropriate use of leases, concessions contracts, and cooperative agreements. When properly managed, private use authorizations can be successful in balancing public and private access issues and ensuring

that maintenance needs are satisfied. Now that the policy problems have been resolved at these beach clubs, private financial commitment to them, especially in the wake of the devastation caused to the area by Hurricane Sandy,<sup>9</sup> has been important to ensure their continued use and availability to the public.

Fundamentally, the National Park Service must embrace all reasonable options to make historic resources available to the public and to help fund its resource management costs. A desire to avoid criticism, or to avoid making hard decisions to balance access needs, should not be allowed to stand in the way of full use of non-federal funding methods. As can be seen in Gateway's ability to quickly address the damage caused by Hurricane Sandy and restore visitor services at the beach, there are clear benefits to leveraging private investment in public resources. Given current funding challenges, there is no longer room for management decisions that are based on simplified policy notions of "fair" or "unrestricted" public access that result in discouraging non-federal investment in properties that the Park Service cannot independently afford to maintain. Valuing full public access over workable preservation partnerships will result in the permanent and unnecessary loss of elements of our cultural history.

## **B. MANAGING HISTORIC SITES AS RUINS AND PRIVILEGING NATURAL OVER CULTURAL RESOURCES**

Some National Park Service personnel have stated a preference to allow historic sites that the Service is financially unable to restore and maintain to be managed as ruins rather than exploring options for historic leasing or other non-federal financing options. There are several obvious problems with adopting this policy approach. To begin, the agency's responsibilities under the Organic Act and the National Historic Preservation Act clearly require the Park Service to preserve and use historic sites. The National Historic Preservation Act in particular includes provisions that require agencies to preserve federally owned historic properties and put them into service, including through adaptive use, whenever possible.<sup>10</sup> Even in a situation where the condition of the site has deteriorated beyond the point of restoration, perhaps as a result of fire or some other catastrophic event that has irreparably damaged the site's structural integrity, the Park Service's statutory conservation responsibilities require stabilization of the ruin to prevent its complete loss.<sup>11</sup>

A preference for ruins over preservation is sometimes attributable to management approaches that prefer natural over cultural resources. There is no legal justification to value one type of resource over the other. In some parks, General Management Plans, especially older plans, focus on conservation of one type of resource over the other. This focus can provide support to park decision-makers to concentrate limited financial resources solely on natural resources. This approach is directly contrary to the mandate given to the National Park Service in the National Organic Act "to conserve the scenery and the natural and historic objects and the wild life" in our National Park System.

Choosing to allow a site to become a ruin as a means to avoid incurring maintenance expenses, or to shift maintenance funds to other priorities, also ignores the reality that managing ruins is not cost-free. The expense for this type

of stabilization is not insubstantial, and it is not a one-time expense. Ongoing maintenance is required to prevent complete collapse and loss of the structure. Finding non-federal funding for this type of expense would be exceedingly difficult, if not impossible. Additionally, any preference to manage a site as a ruin in order to avoid a private use that would limit public access is troubling. By their nature, sites managed as ruins will limit public access to certain areas due to safety and stability concerns. These restrictions will increase over time if the site is not protected from further deterioration. Overall, maintaining historic sites in a state of managed decay is not a desirable, legally supportable, or financially responsible solution. It should be used as a management option of last resort, limited to only the most extreme cases where a historic resource is in an advanced state of deterioration such that re-use options, including non-federally funded adaptive use opportunities, are not available.

### **C. PROTECTING RESOURCES FROM MULTIPLE ERAS**

Many of the historic structures in need of maintenance are not considered central to the main interpretive focus of the park unit where they are located. As a result, when Park Service budgets shrink, these structures sometimes receive less care than others deemed “more important” to telling the park’s story. This situation usually occurs when historic structures post-date the era of interpretive focus for the park, are considered to be “excess” because they are not currently needed by the Park Service, or were not included in park planning documents. This can occur when properties that were considered historically insignificant at the time a park was created acquire greater significance in later years. Examples can be seen in parks like Delaware Water Gap National Recreation Area and the Apostle Islands National Lakeshore. Both of these parks include structures that were not considered historically significant at the time of park establishment, but now are either listed on the National Register of Historic Places or have been determined eligible for listing. Even though these structures are now historically significant in their own right, they are still given low-priority status by the Park Service. To address this issue, the Park Service needs to review its policies to clarify that all historic resources within the agency’s legal stewardship responsibilities are entitled to thoughtful care and preservation.

### **D. MOVING FORWARD**

The policy approaches and concerns discussed above must be reconsidered to ensure that the Park Service is better able to attract non-federal resources to support preservation and maintenance of historic sites. The National Park Service should outline a clear policy preference for balancing private funding opportunities with access requirements. The Park Service should avoid any policy preference for conservation of natural over cultural resources or managing historic sites as ruins. And finally, National Park Service policy should ensure that historic resources are maintained even when they are attributable to eras outside of a park’s primary interpretive focus or were not addressed in a past management plan. A clear policy directive addressing these points will support the National Park Service’s efforts to obtain additional non-federal investments to preserve historic sites now and into the future.

### III. LEGAL AUTHORITY

The National Park Service Organic Act directs the Park Service to conserve historic resources within the National Park System for the enjoyment of the American people.<sup>12</sup> Beyond the broad general authority provided by the Organic Act, other statutes provide the National Park Service with specific legal authority to use a range of methods to fulfill its conservation responsibilities. The Park Service is authorized to lease park buildings, enter into concessions contracts, participate in public-private cooperative agreements, issue commercial use authorizations, and issue special use permits. National Park Service regulations, policy memorandums and Director's Orders further define the agency's use of these authorities. Some familiarity with these intersecting laws and policies is helpful to understand the source of the impediments to increased leasing.

#### A. UNDERSTANDING THE DIFFERENCES BETWEEN LEASES AND CONCESSIONS CONTRACTS

Before delving into the statutory details, a plain language explanation of the key differences between leases and concessions contracts is helpful. Leases and concessions agreements are intended to satisfy different needs. Leasing of historic properties is primarily intended to ensure the use and preservation of historic resources currently unneeded for park operations. Concessions contracts are intended to provide services to park visitors. The most important difference in determining whether a concessions contract or a lease should be used is to take a close look at the type of services that are to be provided. All "visitor services" that are "necessary and appropriate" must be provided through a concessions contract. A service that is appropriate, but not necessary for park visitors, may be authorized through a lease. This determination of whether a proposed service is "necessary and appropriate" has led to confusion. The terms are understood differently and applied inconsistently across different units of the park system. Examples where this confusion has led to less than optimal results are included in the case studies found in the Appendix.

There are different advantages and disadvantages for the Park Service and its non-federal partners when leases are used instead of concessions contracts. Leases provide longer terms and thus the potential ability to use the federal historic rehabilitation tax credit to fund capital improvements needed for historic rehabilitation and adaptive re-use. Leases also offer more flexibility in operations to the lessee. In contrast, concessions contracts allow considerably more control of concessions operations by the Park Service. For example, concessions contracts give the Park Service the authority to establish the price for goods and services that concessioners provide. This degree of control is required because concessioners are providing visitor services that should be affordable to visitors in our public parks. By contrast, a lease delegates much more operational control from the Park Service to the leaseholder.

Another difference between concessions contracts and leases is the source of funding available to cover the Park Service management costs for each program. The Park Service is authorized to use the proceeds from concessions contracts to fund the management of its concessions program. In contrast, the Park

Service is required to use proceeds from the lease of historic properties to fund park infrastructure maintenance costs.<sup>13</sup> As a result of this restriction on the use of funds, there is no dedicated source of funding to administer the Park Service's leasing activities.

Another difference is that leases can be authorized without competition if they are extended to nonprofit organizations whose operation of a leased site will support the park's mission. Concessions contracts, by contrast, must be awarded through a competitive bidding process, and there is no exception for nonprofit organizations.

Leases also can be offered for much longer terms than concessions contracts. Park Service regulations limit lease terms to 60 years.<sup>14</sup> In contrast, concessions contracts are limited to 10 year terms without special approval from the Secretary of the Interior, upon which the maximum term may extend for up to 20 years.<sup>15</sup> The option to provide long term leases creates the opportunity for lessees to use the federal historic tax credit to help fund large restoration projects that would otherwise be financially unworkable.<sup>16</sup> Concessioners cannot use the tax credits because, among other reasons, they never have contract terms long enough to be eligible to claim the credits under federal tax law.

The financial management of leases and concessions contracts also varies significantly. During the term of a concessions contract, the concessioner is required to fund the ongoing maintenance of the site, and is often also required to contribute significant capital funds toward rehabilitation and preservation. These contributions of private capital into public property are accounted for and the concessioner is entitled to a return of those investments upon termination of the concessions agreement.<sup>17</sup> Leaseholders are similarly required to maintain leased property and are often required to fund significant restoration work. However, leaseholders are not statutorily entitled to reimbursement for their capital contributions toward restoration and preservation activities. This exposes leaseholders to greater financial risk than is experienced by concessioners.

## **B. HISTORIC LEASING AUTHORITY**

### **NATIONAL PARK SYSTEM GENERAL AUTHORITIES ACT**

The National Parks Omnibus Management Act of 1998 ("Omnibus Act")<sup>18</sup> was enacted to address a broad range of management issues within the National Park System, including historic leasing. The Omnibus Act included a leasing section that was incorporated into the National Park System General Authorities Act of 1970 ("General Authorities Act").<sup>19</sup> This language, which is now found in the General Authorities Act serves as one of the primary sources of authority for the Park Service's leasing programs.<sup>20</sup> To further underline the importance that Congress places on the use of leases to preserve historic properties, Congress included an additional provision in the Omnibus Act directing the Park Service "to simplify, to the maximum extent possible, the leasing process for historic properties with the goal of leasing available structures in a timely manner."<sup>21</sup>

The leasing language in the General Authorities Act states that "the Secretary may enter into a lease with any person or governmental entity for the use of buildings and associated property administered by the Secretary as part of the

National Park System.”<sup>22</sup> Leased properties must “be used for an activity that is consistent with the purposes established by law for the unit in which the building is located; shall not result in degradation of the purposes and values of the unit; and shall be compatible with National Park Service programs.”<sup>23</sup> The Park Service is also required to receive fair market value for the property, with adjustments allowable for restoration and maintenance costs incurred by the lessee.<sup>24</sup> Leases cannot be used to authorize activities that are required to be authorized through concessions contracts, commercial use authorizations, or other instruments under other federal laws.<sup>25</sup>

### NATIONAL HISTORIC PRESERVATION ACT

The National Historic Preservation Act (NHPA) provides the foundation for the federal government’s policy on the preservation of America’s historic and cultural resources. The NHPA affirmatively requires all federal agencies, including the National Park Service, to “administer federally owned, administered, or controlled prehistoric and historic resources in a spirit of stewardship for the inspiration and benefit of present and future generations.”<sup>26</sup> The NHPA also provides congressional authorization for all federal agencies to lease historic properties. The NHPA first requires federal agencies to place historic buildings into active use to meet their own operational needs to “the maximum extent feasible.”<sup>27</sup> To ensure that buildings which are unnecessary to meet current agency operational needs are also actively used, the NHPA authorizes the use of methods, including historic leasing, to allow agencies to partner with non-governmental entities to preserve historic properties through adaptive reuse.

Section 111 of the NHPA purposefully directs federal agencies, “to the extent practicable, [to] establish and implement alternatives for historic properties, including adaptive use,” and states that agencies “may lease a historic property owned by the agency to any person . . . if the agency head determines that the lease . . . will adequately insure the preservation of the historic property.”<sup>28</sup> The inclusion of this provision authorizing all federal agencies to lease historic properties clearly indicates the important role that Congress intended historic leasing to play in maintaining our historic and cultural heritage.

### HISTORIC SITES ACT OF 1935

The Historic Sites Act provides the National Park Service with another source of leasing authority. Under this statute, the Park Service is authorized to acquire historic buildings for the benefit of the public and then to manage their operations and educational programming through leases, cooperative agreements and other authorized mechanisms.<sup>29</sup>

### LEASING REGULATIONS, POLICIES AND DIRECTOR’S ORDERS

To implement the leasing provisions in the General Authorities Act, the Park Service developed new leasing regulations that were finalized in December 2001.<sup>30</sup> The regulations require NPS to make a series of determinations about the impact of a proposed lease before it can be authorized. The Park Service must determine that:

“(a) The lease will not result in degradation of the purposes and values of

the park area;

(b) The lease will not deprive the park area of property necessary for appropriate park protection, interpretation, visitor enjoyment, or administration of the park area;

(c) The lease contains such terms and conditions as will assure the leased property will be used for activity and in a manner that are consistent with the purposes established by law for the park area in which the property is located;

(d) The lease is compatible with the programs of the National Park Service;

(e) The lease is for rent at least equal to the fair market value rent of the leased property as described in § 18.5;

(f) The proposed activities under the lease are not subject to authorization through a concession contract, commercial use authorization or similar instrument; and

(g) If the lease is to include historic property, the lease will adequately insure the preservation of the historic property.”<sup>31</sup>

After the Park Service determines that these requirements are met, NPS may enter into a lease.

Additionally, NPS regulations require that the lease be for as “short a term as possible” and that no lease term shall exceed 60 years.<sup>32</sup> This 60 year limitation is not statutorily required; it is solely a regulatory creation. Despite the regulations allowing a lease term of 60 years, in practice, some Park Service regions consider 25 years to be the standard limit on long term leases. A 25 year limit is not required by Park Service regulations or policy documents, however, some regions have used it as a rule of thumb. This appears to be motivated by an overly cautious approach intended to avoid resolving concerns about private use of public property of the sort discussed previously.<sup>33</sup> For some properties, a 25 year term is insufficient to justify the significant restoration and maintenance obligations assumed under an historic lease.

The regulations also explain when leases must be competitively selected,<sup>34</sup> provide instructions for soliciting requests for proposals, and include legal provisions that are required in leasing contracts. Additional efforts to clarify NPS procedures and policy related to leasing can be found in a Director’s Order and Policy Memorandum issued on this topic.

### **C. CONCESSIONS CONTRACTS AUTHORITY**

#### **NATIONAL PARK SERVICE CONCESSIONS MANAGEMENT IMPROVEMENT ACT OF 1998**

The National Park Service Concessions Management Improvement Act of 1998 (“Concessions Management Act”) was passed as a part of the Omnibus Act discussed above.<sup>37</sup> It defines concessions policy, governs concessions operations and establishes when concessions contracts are required to authorize activities within National Park System units. The Act requires that public accommodations, facilities and services provided be “necessary and appropriate for public use and



enjoyment of the unit of the National Park System in which they are located.”<sup>38</sup>

To provide these “necessary and appropriate” visitor services, the Concessions Management Act requires NPS to use concessions contracts. The Act instructs the Park Service to award the contracts through a competitive bidding process and establishes standards for the Park Service to consider in evaluating bids.<sup>39</sup> The Act also limits the term of concessions contracts to 10 years. Approval to extend the term up to 20 years may be given by the Secretary of the Interior where the terms of a concessions contract, including any requirement for construction of capital improvements, justify a longer period.<sup>40</sup> In concessions contracts that require concessioners to fund improvements to federal property, the Act creates a leasehold surrender interest that entitles the concessioner to repayment at the expiration of the contract.<sup>41</sup>

The Act also established a National Park Service Concessions Management Advisory Board responsible for advising the Park Service on concessions management matters. The duties of the Board include crafting policy recommendations relating to concessions rates and prices, and submitting an annual report to Congress about concessions activities.<sup>42</sup>

#### CONCESSIONS REGULATIONS, POLICIES, AND DIRECTOR’S ORDERS

Park Service regulations promulgated under the Concessions Management Act provide additional concessions guidance.<sup>43</sup> There is also policy guidance for implementing the Concessions Management Act in Chapter 10 of the NPS Management Policies.<sup>44</sup>

#### D. ALTERNATIVE USE AUTHORIZATION METHODS

The National Park Service has alternative methods available to authorize different types of private use in the parks. This section provides a brief introduction to these alternative authorization methods.

##### COOPERATIVE AGREEMENTS

The National Park Service is authorized to use cooperative agreements to work with private partners to preserve, rehabilitate, and operate federally owned historic structures. Cooperative agreements generally function as statements of understanding that guide joint federal and non-governmental efforts. They provide a management tool that in many ways is more flexible than leases or concessions contracts. They can be used to set guidelines to operate pilot programs and to test new partnerships. When they are used to authorize a partner to operate a program within a historic structure, partnership agreements do not establish the same level of contractual obligation as do leases and contracts. This makes it easier for the Park Service to change the terms of the agreement or even cancel it with little notice. This flexibility can be a great benefit to the Park Service, particularly when trying out new approaches. At the same time, this flexibility can create a lack of certainty that prevents partners from being willing to make substantial investments in park resources.

General authority for the Park Service to enter into cooperative agreements is found in the NPS Organic Act and the Federal Grant and Cooperative Agreement Act.<sup>45</sup> Specific authority for entering into cooperative agreements

with non-federal partners to manage historic resources is included in the Historic Sites Act<sup>46</sup> as stated above, as well as the General Authorities Act.<sup>47</sup> In practice, cooperative agreements require compliance with a broad range of federal laws. Compliance issues under the Federal Advisory Committee Act, the Administrative Procedure Act, the Freedom of Information Act, and the National Environmental Policy Act, among others, may arise.<sup>48</sup> While a full discussion of these compliance concerns is beyond the scope of this report, potential partners, as well as National Park Service personnel, must be aware of these issues to ensure that projects do not hit unexpected roadblocks.

### COMMERCIAL USE AUTHORIZATIONS

The Concessions Management Act governs commercial use authorizations in addition to concessions contracts and leases.<sup>49</sup> Similar to a concessions contract, a commercial use authorization is a written authorization from the National Park Service to provide visitor services within a park. However, the Act requires that commercial use authorizations be used only where operations “will have *minimal impact* on resources and values of the unit of the National Park System,”<sup>50</sup> and the Act includes significant limitations on their use. For example, commercial use authorizations cannot be used where the annual gross receipts are anticipated to exceed \$25,000. Commercial use authorizations also prohibit all construction or improvements on federal property, are limited to two year terms, and the types of groups that can receive commercial use authorizations are limited.<sup>51</sup> These statutory requirements make it clear that commercial use authorizations are intended to be used only in limited circumstances.

### SPECIAL USE PERMITS

The National Park Service may issue special use permits to authorize short term private activities that occur on park lands, as long as the uses are compatible with the park’s purpose.<sup>52</sup> These permits are intended to establish rules and guidelines to regulate the private activities and ensure that there are no impacts on the park’s resources. Special use permits are often used to allow weddings, family reunions or other private events to take place on park property. They can also be used in limited instances to authorize events that are open to the public but are operated by private groups.<sup>53</sup>

### TERM-LIMITED PRIVATE OCCUPANCY AGREEMENTS

The National Park Service uses different types of term-limited private occupancy agreements to authorize the use of federally owned historic structures in a few parks. These types of agreements are generally used where privately owned lands and structures were purchased to include within a new or expanding park unit. As a part of the acquisition process, the Park Service has sometimes entered into agreements to grant life estates or other term-limited occupancy rights to existing residents. In return for the right to remain as a private resident on publicly owned lands and structures, these private right holders are financially responsible for maintaining the property. When these term-limited estates expire, full responsibility for the conservation and management of the properties transfers to the National Park Service. Too often, inadequate funding causes these sites

to immediately become part of the historic resource maintenance backlog. More forward-looking management is needed to ensure that the next steps for these historic sites are already determined and ready for immediate implementation once the sites are transitioned to full federal control. Action is needed to address this issue, including the increased use of the National Park Service's historic leasing authority.

#### **IV. RECOMMENDATIONS**

During the preparation of this report, examples of the clear and urgent need to address the systemic constraints preventing the Park Service from using historic leasing to address its cultural resource maintenance backlog were identified. Previous studies and policy reform efforts have attempted to address concerns about the Park Service's maintenance backlog by removing impediments to leasing, but these efforts have resulted in few, if any, concrete changes.<sup>54</sup> In the meantime, the challenges have only grown. By using the case studies included in the Appendix as a window into the different successes and failures experienced by parks across the National Park System, this report has developed recommendations to increase the number of leasing success stories system-wide. The recommendations seek to reduce or remove the barriers that hinder more flexible historic resource management decisions, and to set the Park Service onto a path toward more preservation successes.

##### **A. A NEW POLICY APPROACH: Preservation First**

The National Park Service should consider adopting a new policy approach that emphasizes the opportunities to achieve preservation in resource decision-making. The Park Service should work to remove barriers that restrict full use of all available preservation tools, including historic leasing. A new Director's Order could be used to make this shift and should emphasize the significant public benefit in having important historic structures rehabilitated and maintained by non-federal entities. Where the choice is between preservation with limited public access on the one hand, or vacancy and deterioration of the resource on the other, the Order should direct park personnel to consider preservation first. And where a proposed policy involves adopting a management approach that could favor natural over cultural resources, the Order should direct park personnel to carefully consider these values on an equal footing.

Targeted staff training offered in conjunction with a new Director's Order would help to encourage a change in management culture. This type of training has been successfully used by the General Services Administration to develop awareness of historic preservation goals within their agency.<sup>55</sup> Similar training offered to Park Service personnel should help to promote a consistent agency-wide approach to using all available tools to preserve historic resources. The training could use a case study approach to highlight examples where historic leasing, cooperative agreements, and concessions contracts have been used to revitalize park resources. Training that encourages greater understanding of preservation tools and that builds a shared philosophical approach to historic preservation, should lead to more preservation friendly management and policy decisions. Following the training, each park superintendent should conduct a review of any opportunities for historic

leasing, as well as any park-level management decisions that may have restricted the use of historic leasing and remove any barriers to greater leasing that are identified.

## **B. CREATE A PRESUMPTION IN FAVOR OF PRESERVATION: Clarify “Necessary and Appropriate”**

As described previously, a mix of statutory law and Park Service regulations and policy determines which type of use authorization method is required in different cases. The complexity of this body of legal authority has created a situation where it is not always clear to park personnel which type of use authorization is required. Confusion regarding whether a lease may be used or a concessions agreement is required, has slowed or halted decision-making. For structures in need of substantial maintenance and repair work, the chilling effect of this uncertainty can result in irreparable damage or even the permanent loss of the resources.

The 1998 Concessions Management Act established the national policy for providing accommodations, facilities, and other services within units of the National Park System. Congress authorized the National Park Service to enter into concessions contracts to approve activities within the system that are “*necessary and appropriate* for public use and enjoyment of the unit of the National Park System in which they are located” [emphasis added]. The Act also includes language that mandates the use of concessions contracts to provide “visitor services” in the parks, which does place some limits on the use of leases and other use authorization methods.<sup>56</sup> The Park Service has developed regulations implementing the Concessions Management Act that have further constrained its ability to flexibly use its leasing authority.

### **NPS REGULATION AND POLICY BARRIERS**

The text of the Concessions Management Act itself does not provide a detailed definition of the types of “visitor services” that must be authorized through a concessions contract. In its regulations the Park Service developed an expansive definition of “visitor services.” Under Park Service regulations “visitor services” are:

“accommodations, facilities and services determined by the Director as necessary and appropriate for public use and enjoyment of a park area provided to park area visitors for a fee or charge by a person other than the Director. The fee or charge paid by the visitor may be direct or indirect as part of the provision of comprehensive visitor services (e.g., when a lodging concessioner may provide free transportation services to guest). Visitor services may include, but are not limited to, lodging, campgrounds, food service, merchandising, tours, recreational activities, guiding, transportation, and equipment rental. Visitor services also include the sale of interpretive materials or the conduct of interpretive programs for a fee or charge to visitors.”<sup>57</sup>

This broad definition of “visitor services” adopted by the Park Service combined with the Concessions Management Act’s requirement that concessions contracts be used to provide “visitor services” effectively includes almost every type of

commercial activity that might be authorized within a park system unit. This overly broad definition of “visitor services” limits the Park Service’s ability to fully use its leasing authority.

In the rare cases where the Park Service determines that a proposed use does not fall within the definition of “visitor’s services,” the agency may consider using a lease to authorize the activity. However, the Park Service has created another hurdle that restricts the use of historic leases at this point in the process. Park Service policy states that leasing is likely appropriate only if “the property where the proposed services are to be provided is not near a particular visitor destination of the park area; and the patrons of the lessee are expected to be primarily persons who come to the park area only to utilize the lessee’s services.”<sup>58</sup> Again, this additional layer of restriction on the use of leases is not required by statute, and it discourages the greater use of leases.

When the Concessions Management Act was passed, nothing either in its text or in the congressional record indicated that Congress intended to tie the Park Service’s hands on the use of historic leasing. In fact, given the congressional directive to the Park Service to simplify and streamline historic leasing, it seems clear that Congress envisioned a robust role for leasing.<sup>59</sup> Certainly Congress did not intend to provide a leasing authority to the Park Service that can be somewhat unusable in practice. Today, fifteen years after its passage, the language of the Concessions Management Act, combined with Park Service regulations and policy interpretations, have created a situation where the use of leases is unnecessarily constrained.

In 2007 the NPS Director’s Office sought to address some of this confusion by issuing a policy memorandum regarding the procedures for approving activities through leases compared to concessions contracts or commercial use authorizations.<sup>60</sup> The policy memo provides guidance intended to lead the reader through the decision-making process. Unfortunately, even after issuance of this policy memo, significant confusion remains. Interviews conducted with park personnel uncovered a belief among some that NPS policy requires all commercial services to be authorized with a concessions contract, rather than a lease. Another example of confusion is seen in decisions to authorize overnight accommodations, which is discussed later in the case studies. Several urban parks, notably the Argonaut Hotel, have executed commercial leases that offer overnight accommodations. Other parks, as seen in the example of the George Stanford House in Cuyahoga Valley National Park, have determined that overnight accommodations must be provided through concessions contracts. Although there are examples where park superintendents are using leasing more broadly, full use of the agency’s leasing authority continues to be unduly constrained system-wide because of inconsistent policy interpretations across the Park Service.

The National Trust believes that this issue can best be addressed by issuing a new Director’s Order and by amending National Park Service regulations. First, a New Director’s Order should be issued that explicitly states there is no preference for the use of concessions over leases, except where direct visitor services are being provided. Next, the Park Service needs to reconsider its definition of visitor

services and develop a narrower and more precise definition that does not result in interpretations that improperly limit the use of leases.

Finally, the Park Service should develop a Director's Order or regulation stating that, where a building is not needed for park operations or to provide visitor services, it should be made available for lease. The Park Service should create a presumption that a structure is not needed for park operations or visitor services if it is unused for a period of 36 months or longer. In such instances, a structure should be offered for lease within 12 months after a 36 month vacancy period has been reached. This presumption will compel the Park Service to put its historic structures into service, and will ensure that no structures sit unused and deteriorating for years when they could be available for lease. Taken together, these changes, communicated through a new Director's Order that supersedes all previous leasing orders, would elevate historic leasing to its appropriate role as a key tool to manage historic resources in the National Park System.

### **C. RESTRUCTURE LEASING MANAGEMENT**

When passing the National Parks Omnibus Management Act of 1998, Congress directed the Park Service "to simplify, to the maximum extent possible, the leasing process for historic properties with the goal of leasing available structures in a timely manner."<sup>61</sup> In an attempt to satisfy this directive, the Park Service restructured the internal management of its leasing operations. Prior to the restructuring, the historic leasing program had been managed by the Cultural Resources Division, which had a good track record of prioritizing preservation and using private leases to maintain historic buildings.

The historic leasing program is now managed by the Commercial Services Program. Before this new grant of authority, the Commercial Services Program had focused solely on concessions management. The unintended consequences of this shift included a reduction in the priority given to historic leasing, the conflation of leasing with concessions, the prioritization of revenue generation over historic preservation, and a proliferation of policies and practices that do not accommodate the realities of the real estate market. This result is not surprising since concessions management is the traditional area of expertise of the Commercial Services Program staff and they have managed historic leasing through this lens. However, this approach ignores the fact that historic leases, unlike concessions contracts whose main purpose is to provide visitor services, are a tool whose main purpose is to assist in the preservation of historic structures.

One of the main reasons why the responsibility for historic leasing was transferred from the Cultural Resources Division to the Commercial Services Program was the lack of technical real estate management skills held by the staff in the Cultural Resources Division. Unfortunately, although the Contracting Officers and Concession Specialists in the Commercial Services Program are well trained in contracting and in the hospitality business, they also lack expertise in leases, especially historic leases whose main goal is preservation rather than generating income or providing visitor services. To build a successful historic leasing program, the Park Service needs its staff to put more focus on

the primary purpose of the program—preservation and asset management of important historic properties.

Separating the management of concessions contracts from historic leases is one method that the Park Service should consider to address this issue. For example, the Northeast Regional Office (NERO) has had great success with its internal management structure for historic leasing. Although they are all housed in the Commercial Services Division, NERO separates its realty staff from its concessions and commercial services staff. The NERO realty office has specialists to focus on the leasing program. With the focus solely on leasing, program staff have adopted effective new procedures and documents to streamline leasing procedures. For example, they adopted a form document that satisfies the requirement for a “Leasing Determination” that must be approved by the Regional Director before it can be executed. Across the Northeast region, there are currently 36 leases in place that generate \$1.5 million in rental revenue and save park budgets some \$2.78 million in annual maintenance expenditures.<sup>62</sup> This focus on leases helped NERO to supplement its funding and meet its preservation responsibilities. It also helped ensure that staff could focus on one area of expertise and build a successful leasing program separate from the management of concessions contracts. This clear separation of functions within the Commercial Services Division also helped NERO to track its leasing revenue and measure its progress.

In addition to separating leasing and concessions management, increasing responsibility for historic leasing for specific NPS positions could also be helpful. For example, the NPS Associate Director for Cultural Resources is in a logical position to advocate for greater use of historic leasing. However, under present policies, this Associate Director has little involvement in the process, except for seeking compliance with Section 106 after the leasing, contracting, or other partnering is already completed. In general, this approach seems to ignore the more proactive stewardship responsibilities of Section 110 of the NHPA, which requires all federal agencies to actively manage and maintain their historic resources. This disconnect could be remedied by creating a formal review role for the Associate Director early on in the leasing process and by ensuring that Section 106 compliance is addressed while a lease is going through the review process.

Similarly, the NPS Associate Director of Park Planning, Facilities and Lands, who oversees maintenance of all Park Service facilities, as well as the Service’s realty program, has no direct involvement in decisions to lease historic structures. One improved organizational construct could be to place the historic leasing program under the direct administration of either the Associate Director for Cultural Resources, or the Associate Director for Park Planning, Facilities and Lands, rather than under the Associate Director for Business Services. Such a change would recognize that historic leasing is not a business service; rather, it is a method to increase the use of non-federal investments to meet the Park Service’s stewardship responsibilities for historic resources.

## D. REFORM LEASING PROCESSES

### THE APPRAISAL PROCESS

Since 2003, the Department of the Interior has centralized all appraisals in the Office of Valuation Services (OVS) under the Assistant Secretary for Policy, Management, and Budget. The motivation behind this reorganization was to consolidate the appraisal responsibility into one office to better achieve consistency and fairness. Unfortunately, this shift away from regional responsibility has resulted in long delays and inconsistent results that have interfered with the Park Services' ability to lease historic properties.

Under the current system, appraisals through OVS take six months to complete on average and the cost for the appraisal often exceeds the economic value of the lease.<sup>63</sup> The centralized Request for Proposal (RFP) process has also caused some property appraisals to be completed by non-local appraisers who are unfamiliar with the local real estate market and have submitted appraisals grossly out of step with local market realities. As a result, re-appraisals have sometimes been required. For example, at the Cape Cod National Seashore, two separate appraisers submitted widely different valuations of similar buildings located within the same park. The long timeframe for completing appraisals, coupled with inconsistent results, has made leases harder to negotiate and settle.

Current OVS appraisal procedures also fail to appreciate that appraisals for historic properties require an appraiser with unique skills. Valuation of historic sites is very different than performing land appraisals of the type needed by other federal agencies. It is not surprising that problems have arisen when responsibility for appraisals has been consolidated within the OVS, whose main appraisal responsibilities are to complete land appraisals to support federal land sales, acquisitions, and exchanges for NPS, the Bureau of Land Management and the U.S. Fish and Wildlife Service. The OVS has extensive knowledge and experience with real estate values, but not with commercial or residential leases of historic properties within NPS units. Additionally, historic properties that are located in very remote areas, or are in extremely poor condition, may have an effective fair market rental value of almost zero. OVS staff lacks sufficient training and expertise to appreciate the nuances of appraising the value of rents and leases for these kinds of unique historic properties.

One related area where problems have arisen is in determining an appropriate rental or lease value for historic structures. While federal law rightly requires the Park Service to obtain fair market value for its leased properties,<sup>64</sup> federal law does not statutorily require the use of a particular valuation method to determine fair market value. The current appraisal process is not required by statute and could be reformed. This reform should include adding the option to determine fair market value through a market study approach rather than individual appraisals. The Delaware Water Gap provides a good example to illustrate how this change could make a difference.

There are approximately 100 historic structures located in the Delaware Water Gap that could be leased right now. Many are homes that could be repaired and put back into use as vacation rentals or residences. To attempt to lease



each of these structures one by one to individual lessees would likely take so much NPS staff time as to make it impractical. Similarly, to make rehabilitation of these structures financially attractive to private investors, an approach that maximizes the economy of scale is needed. Through the use of a market study, a value could be placed on a block of structures that could be offered for lease as a group. It is easy to imagine that an experienced vacation rental management company might be interested in this type of arrangement. It would save NPS the expense of conducting multiple appraisals and would still ensure that there was an evidence-based approach to determining fair market rental value.

To address the desperate need to reform the appraisal process for NPS managed historic structures, the Park Service should request permission from the Secretary of the Interior to conduct their lease valuations outside of the traditional OVS appraisal process. Instead of appraisal responsibility sitting with OVS, the responsibility for making valuation decisions for historic structures should be managed at the regional or park level. Each region could manage its own appraisal process by adopting request for proposal forms to solicit local appraisers. They should also be given the flexibility to use a market study approach to determine value when the situation warrants. In general, the regional offices should move towards a more flexible approach that values putting historic structures into use and ensuring their maintenance above other concerns. OVS could periodically audit each regional office's transactions, to assure that the government is obtaining fair market value under this more adaptable and market-responsive system.

### LEASE TERMS AND EXCESSIVE REVIEW REQUIREMENTS

The National Park Service's leasing regulations contain language limiting leases to "as short a term as possible."<sup>65</sup> The same regulation further states that "leases ... may not be extended" except where "the Director determines that an extension is necessary because of circumstances beyond the Director's control." These provisions are not required by the leasing provisions of the General Authorities Act or the National Historic Preservation Act. In fact, these provisions serve to limit historic leasing, and hinder the rental and private maintenance of historic buildings in contravention of the policy goals underlying the leasing authorizations in federal law.

In implementing this regulatory preference for leases of "as short a term as possible," the NPS has developed different review and approval requirements for leases of different lengths. Leases lasting a maximum of 60 days are short term leases that are excluded from formal bidding processes and can be approved by a park superintendent.<sup>66</sup> Leases with terms of 61 days up to 10 years are long term leases that may be approved by regional directors. Leases with terms of 10 years or more require approval from the Director of the Park Service at headquarters.<sup>67</sup> This additional, and often unwarranted, review of longer term leases slows the leasing process considerably.<sup>68</sup>

Taken together, these restrictions on longer lease terms, combined with the slow approval process, undoubtedly discourages some potential lessees from deciding to partner with the Park Service. Lessees who are interested

in working on large scale projects are the ones least likely to go through this type of lengthy review process. A lessee operating a commercial venture may be unwilling to make substantial contributions of time and capital towards preservation when the venture may be forced to relocate after 10 years. Likewise, a lessee seeking to work out the details of a complex deal that may include securing financing from multiple sources is not generally in a position to wait for the Park Service to conduct a review process that does not move at the speed of business.

To address these issues, the Park Service should conduct a full review of its regulations and policies to remove the preference for the shortest possible lease terms. Instead, lease term decisions should be driven by the needs of particular situations, including routinely offering leases of terms up to the 60 year limit in appropriate cases to facilitate use of the federal historic tax credit. The Park Service should also revise its internal review processes. Reviews should be streamlined for leases of all lengths. Review at the headquarters level should be reserved for cases where unique concerns affect the property or non-standard terms are included in the lease, rather than automatically elevating all 10 year leases for headquarters review.

#### RENT RECONSIDERATION

Another problem with the current appraisal process is the inclusion of reappraisal provisions in most historic leases. The initial valuation of the property used to establish an appropriate leasing rate is based on an appraisal of the building's current condition at the time of the initial RFP or during lease contract negotiations. At this point, the building is often in a deteriorated condition, which results in a lower leasing rate. This lower leasing rate is generally more than offset by lease requirements directing the lessee to rehabilitate the property to meet the Secretary of the Interior's Standards for Preservation of Historic Properties at the lessee's expense. After the property has been rehabilitated using the lessee's funds, current Park Service practice is to reappraise the property. These reappraisals generally occur at ten year intervals. Almost inevitably, following rehabilitation, the building will appraise at a greater value and a rent increase will occur. This results in lessees paying twice—once for the investment in upgrading the property, and again by paying higher rent as a result of their own investment.

Because of the lack of certainty that rent reconsideration provisions inject into the lease, the provisions can make it difficult for a lessee to obtain financing for repairs and rehabilitation. There have been cases where lessees have relinquished their leasehold interest following a rental reconsideration that resulted in a rent increase. When this occurs, the Park Service may be unable to find a new lessee, and the building will again sit vacant and deteriorate. In contrast to concessioners who are reimbursed for capital improvement investments they make towards rehabilitation during the term of their contract, historic lessees are not repaid for their investment. Lessees and their creditors assume substantial financial risk when entering into long term leases that require large capital investments. When rent reconsideration provisions are added to the mix, the risks increase further.

As is the case with the individual property appraisal scheme, these rent reconsideration provisions exist because of Park Service policy and regulatory decisions, but they are not required by federal statutory law. To encourage greater private interest in historic leasing, the Park Service should consider refraining from reconsidering rental amounts until at least 15 years after substantially all rehabilitation costs have been incurred. This change will make the Park Service leasing process more responsive to the needs of the private market and will clear the way for the Park Service to more effectively use leasing as a tool to preserve historic structures.

#### **E. TAKE ACTION TO ENSURE BROADER AVAILABILITY OF FEDERAL HISTORIC TAX CREDITS**

The National Park Service administers the federal Historic Tax Credit (HTC) program in partnership with the Internal Revenue Service (IRS) and with State Historic Preservation Offices.<sup>69</sup> Since 1982, it has led to the rehabilitation of more than 38,700 buildings, created more than 2.35 million jobs and catalyzed more than \$106 billion of private investment in preservation. The tax credit works by lowering the amount of tax owed by the property owner for close to a dollar credit for every dollar of tax liability, up to a 20 percent cap.<sup>70</sup> While the HTC is often used by private parties who own historic properties outright, it is available to private leaseholders whose leasehold interest is of a long enough term to create an ownership interest that will satisfy tax law requirements. Eligible lessees who rehabilitate a property and place it into commercial use are able to claim the 20 percent historic rehabilitation tax credit for qualified rehabilitation expenses.<sup>71</sup>

Through long term historic leases, HTCs have been used within National Park System units to fund the rehabilitation and use of significant historic buildings. Over the past five years, the total amount of historic tax credits used annually is approximately \$590 million. Only a small fraction of this amount has been used within National Park units. Examples of successful preservation projects that have used the HTC, including a fish cannery and warehouse in the San Francisco Maritime National Historical Park, which was transformed into the Argonaut Hotel and the rehabilitation of Cavallo Point, the Lodge at Golden Gate, are discussed in the case studies. There are other historic structures in the National Park System that are in dire need of rehabilitation and could be put into productive use as hotels, lodges, restaurants and shops for park visitors.

Of the approximately 9,600 historic buildings in the park system, close to 1,350 are used by concessioners, leaving approximately 8,250 for the Park Service to maintain and use, or offer for lease. Historic tax credits have the potential to be a significant source of funding to rehabilitate these historic buildings within National Park units. While there are market factors that put practical limits on the use of the credit, such as a limited number of qualified historic buildings, compliance costs, and return on investment concerns, there is no statutory cap on the maximum amount of credit that can be claimed. This makes the HTC ideal for funding large-scale rehabilitation projects. If the Park Service takes steps to expand the use of historic leasing in the national parks, the HTC will be more available to help fund rehabilitation expenses.

A significant barrier to the expanded use of the HTC to rehabilitate buildings within the National Park System has been the Park Service's regulatory and policy preference for entering into historic leases for the shortest possible time-frame. This policy limits the ability and willingness of park administrators to offer leases for the length necessary for a private entity to qualify for the federal HTC. Generally speaking, the length of time necessary for a lease to utilize the HTC is 55 years or longer.<sup>72</sup> When the Park Service issues an RFP for a historic lease that is less than 55 years for a property that requires a significant capital investment in rehabilitation, the Service is essentially assuring that the lessee cannot use the HTC to support their investment. This eliminates an important incentive for applicants and reduces the likelihood that larger scale rehabilitation projects will find suitable private partners.

For any historic lease that requires the lessee to make a substantial investment in rehabilitation or maintenance, Park Service policy should require the lease to be offered for a minimum 55 year term. To avoid some of the risks associated with long term leases, the Park Service can work with its solicitors to develop standard clauses in their leasing agreements that allow lease termination in the event of non-performance. This type of clause would not invalidate or trigger a recapture of the tax credits so it should be acceptable to the Park Service, potential lessees, and the IRS.

In addition to the issues created by offering leases with too short a term, statutory restrictions on concessioners also limit the use of the HTC.

Approximately 1,350 buildings within the National Park System are managed by concessioners under the Concessions Management Improvement Act of 1998. A portion of these 1,350 buildings are historic, so their qualified rehabilitation costs could conceivably be offset through use of the HTC. However, as discussed more fully previously, the Concessions Management Act limits the term of concessions contracts to 10 years, absent Secretarial approval of a longer term up to 20 years. As a result, these contracts, even with Secretarial approval, are of insufficient length to allow concessioners to use the HTC.

The Park Service should act to revise its regulations and policies restricting the use of long term leases and the HTC. The Park Service and its partners should also undertake an evaluation to determine what other steps can be taken to catalyze expanded use of the HTC within the National Park System. Changes to the IRS Code and the Concessions Management Improvement Act may be desirable to facilitate more robust use of the tax credit. Moreover, the Administration should affirm the importance of preserving the HTC and resist any attempts to weaken it in the context of tax reform. The federal HTC is written into the tax code with no date of expiration. However, there is significant concern that proposals to reform the tax code may undermine this long standing and successful program to encourage the preservation of historic properties.

#### **F. ADDRESS THE FUNDING CHALLENGE**

Under the leasing provisions included in the General Authorities Act, as amended, and the regulations promulgated pursuant to that statute, the Park Service lacks authority to use lease revenue to manage or monitor its

historic leases.<sup>73</sup> Instead, current law requires the Park Service to use all rental revenue for building maintenance and to return any remaining funds to the Treasury.<sup>74</sup> Park Service personnel identified this lack of dedicated funding as an impediment to increased historic leasing. In addition to concerns about funding skilled leasing staff generally, there is a concern that funding is inadequate to ensure compliance, through monitoring and enforcement, with Section 106 of the National Historic Preservation Act. This constraint on the use of funds seems to have contributed to the overall lack of focus on increasing the use of leases. If a dedicated source of funds were available for administration, additional leasing would likely result. Congress should act to remove these restrictions on the use of leasing proceeds.

A potential solution to the funding issue is also available at the administrative level. The National Park Service should consider revising its leasing regulations to align with funding language included in Section 111 of the National Historic Preservation Act. In contrast to the language in the General Authorities Act, the National Historic Preservation Act provides that lease proceeds:

“may, notwithstanding any other provision of law, be retained by the agency entering into such lease and used to defray the costs of administration, maintenance, repair, and related expenses incurred by the agency with respect to such property or other properties which are on the National Register which are owned by, or are under the jurisdiction or control of, such agency. Any surplus proceeds from such leases shall be deposited into the Treasury of the United States at the end of the second fiscal year following the fiscal year in which such proceeds were received.”<sup>75</sup>

This language is in direct conflict with the provisions of the General Authorities Act. The Park Service should confer with its solicitors to determine if this conflict can be resolved in a way that allows the Park Service to use lease proceeds to fund administrative support sufficient to grow the leasing program. The Park Service should also consider using leasing revenue as an additional source of funds to reduce the maintenance backlog for historic properties throughout the parks.

Another potential funding solution could be to adopt a policy that requires all leases of properties valued over a predetermined dollar amount to fund their own oversight. In practice, this would prohibit lease agreements that allow lessees to satisfy 100 percent of their rent obligations through payment of maintenance and rehabilitation expenses. Instead, an amount sufficient to fund the Park Service’s oversight of the lease would be paid annually by each lessee.

## V. CONCLUSION

Urgent action is needed to remove the obstacles that stand in the way of full and effective use of the Park Service’s historic leasing authority. As demonstrated above and in many of the case studies included in the Appendix, historic leasing can be a very effective financial management tool to help the Park Service fulfill its stewardship responsibilities for managing historic properties. To build on the successes and to address the challenges discussed throughout this report, additional historic leasing opportunities and partnerships

with non-federal partners, including nonprofit organizations, local and tribal governments, and others should be explored.

Leadership and targeted action to address this challenge is overdue and urgently needed. A proactive approach is needed that reviews, reconsiders, clarifies, and more effectively implements Park Service regulations, policies, procedures, and management approaches to historic leasing. Steps need to be taken to reduce any delays caused by unnecessary administrative review procedures. To stop further deterioration of historic properties managed by the National Park Service, and the corresponding increase in rehabilitation costs, change is needed now. Historic leasing can be used more effectively by the National Park Service to ensure that the historic buildings under its care will be preserved for future generations to use and enjoy.

The National Park Service is one of the nation's most valued and important institutions. The National Trust for Historic Preservation is committed to working with the Park Service and its dedicated staff to enhance and expand the use of historic leasing to preserve more of our nation's treasured places.

## ENDNOTES

<sup>1</sup> National Park Service Organic Act, 16 U.S.C. § 1.

<sup>2</sup> *The State of America's National Parks*, National Parks Conservation Association, Center for Park Research, June 2011, available at: <http://www.npca.org/about-us/center-for-park-research/sanp/SANP-long-WEB.pdf>.

<sup>3</sup> As used in NCPA's report, the term historic structure includes archaeological sites, statues, monuments, and other classifications in addition to historic buildings.

<sup>4</sup> U.S. House, H.R. 2584, 112th Cong., Comm. Rep. No. 112-151 (2011).

<sup>5</sup> U.S. House, H.R. 2055, 112th Cong., Comm. Rep. No. 112-331 (2011).

<sup>6</sup> While the National Park Service Organic Act does provide that "... no natural curiosities, wonders, or objects of interest shall be leased, rented, or granted to anyone on such terms as to interfere with free access to them by the public," this general proscription has not been interpreted to forbid all private uses that place limitations on public access. Notably, Congress has not felt it necessary to amend this "free access" language when passing legislation explicitly authorizing federal leasing in other statutory sections. 16 U.S.C. § 3.

<sup>7</sup> *Private Use of Public Lands: National Park Service and Bureau of Land Management*, U.S. Dept. of Interior, Office of Inspector General, Report No. W-IN-MOA-0008-2005 (April 2007), available at <http://www.gpo.gov/fdsys/pkg/GPO-DOI-IGREPORTS-2007-g-0019/pdf/GPO-DOI-IGREPORTS-2007-g-0019.pdf>.

<sup>8</sup> These clubs provided "necessary and appropriate" visitor services through special use permits when the Concessions Management Act required the use of concessions contracts. 16 U.S.C. § 5951. A full discussion of the Concessions Management Act's requirements and explanation of the issue of "necessary and appropriate" visitor services that must be provided through concessions contracts is included in this report.

<sup>9</sup> The concessioners operating these sites immediately put their financial resources to work to restore the clubs. Repairs were completed to allow the clubs to open for the 2013 season.

<sup>10</sup> 16 U.S.C. § 470h-2(a); 16 U.S.C. § 470h-3(a).

<sup>11</sup> 16 U.S.C. § 470h-2(a); see also The Secretary of the Interior's Standards and Guidelines for Federal Agency Historic Preservation Programs Pursuant to the National Historic Preservation Act, 63 Fed.Reg. 20496 (1998).

<sup>12</sup> 16 U.S.C. § 1.

<sup>13</sup> 16 U.S.C. § 1a-2(k)(5); 16 U.S.C. § 470h-3.

<sup>14</sup> 36 C.F.R. § 18.10.

<sup>15</sup> 16 U.S.C. § 5953.

<sup>16</sup> For federal historic tax credits to be claimed by a leaseholder of an NPS-owned historic site, the leaseholder must have sufficient control of the property to satisfy I.R.S. requirements to claim the credit. A lease of at least 55 years is generally required. See the Recommendations Section for a full discussion of the opportunities to use the federal historic tax credit to increase funding for Park service-owned historic sites.

<sup>17</sup> 16 U.S.C. § 5954; 105 P.L. 391, 404.

<sup>18</sup> 16 U.S.C. §§ 5901; 105 P.L. 391; 112 Stat. 3497.

<sup>19</sup> 16 U.S.C. §§ 1a-1, et seq.

<sup>20</sup> The leasing language in the Act did not distinguish between leasing of

historic and non-historic structures. Similarly, National Park Service regulations implementing these provisions manage leases for historic and non-historic properties in essentially the same way. There are small differences, including the requirement to include preservation provisions in leases of historic properties and the requirement to consult with the Advisory Council on Historic Preservation while considering leases of historic properties. Throughout this report, the term “leasing” and “historic leasing” are used interchangeably to refer to the leasing of historic buildings or land unless otherwise indicated.

<sup>21</sup> 105 P.L. 391, 802.

<sup>22</sup> 16 U.S.C. § 1a-2(k)(1).

<sup>23</sup> 16 U.S.C. § 1a-2(k)(3).

<sup>24</sup> 16 U.S.C. § 1a-2(k)(4).

<sup>25</sup> 16 U.S.C. § 1a-2(k)(2).

<sup>26</sup> 16 U.S.C. § 470-1(3).

<sup>27</sup> 16 U.S.C. § 470h-2(a); see also Exec. Order 13006, *Locating Federal Facilities on Historic Properties in Our Nation's Central Cities* (May 21, 1996), available at: <http://www.achp.gov/EO13006.html>.

<sup>28</sup> 16 U.S.C. § 470h-3(a).

<sup>29</sup> 16 U.S.C. § 462.

<sup>30</sup> 36 C.F.R. §§ 18.1-18.12.

<sup>31</sup> 36 C.F.R. § 18.4.

<sup>32</sup> 36 C.F.R. § 18.10.

<sup>33</sup> A good example of the effects of this de facto 25 year term limit can be seen in the example of the Cliff Park Inn discussed in the case studies.

<sup>34</sup> Noncompetitive leases can be awarded where a qualified nonprofit organization is the intended lessee. 36 C.F.R. § 18.9.

<sup>35</sup> 36 C.F.R. § 18.6-18.9; 18.11-18.12.

<sup>36</sup> See generally U.S. Dept. of Interior, National Park Service, Director's Order #38: Real Property Leasing (Jan. 19, 2006), available at: <http://www.nps.gov/commercialservices/docs/Apr-7-Directors-Order-38-Real-Property-Leasing.pdf>; Wenk, Daniel, U.S. Dept. of Interior, National Park Service, Policy Memorandum 07-01, Authorizing activities through leases versus concession contracts or commercial use authorizations (May 29, 2007), available at: <http://www.nps.gov/policy/leasingmemo.pdf>.

<sup>37</sup> 16 U.S.C. §§ 5951, et seq.

<sup>38</sup> 16 U.S.C. § 5951(b)(1).

<sup>39</sup> 16 U.S.C. § 5952.

<sup>40</sup> 16 U.S.C. § 5953.

<sup>41</sup> 16 U.S.C. § 5954.

<sup>42</sup> 16 U.S.C. § 5958.

<sup>43</sup> 36 C.F.R. § 51.

<sup>44</sup> Management Policies 2006, National Park Service, pg. 144, §§ 10.1, et seq., available at: <http://www.nps.gov/policy/MP2006.pdf>; see also U.S. Dept. of Interior, National Park Service, Director's Order #48A: Concession Management.

<sup>45</sup> Similar to the broad grant of leasing authority included in the National Historic Preservation Act, the Federal Grant and Cooperative Agreement Act (FGCA) provides all federal agencies with authority to use cooperative agreements. The FGCA states that cooperative agreements with states, local governments,



and private parties, including nonprofit groups, are appropriate where: “(1) the principal purpose of the relationship is to transfer a thing of value to the State, local government, or other recipient to carry out a public purpose of support or stimulation authorized by a law of the United States instead of acquiring (by purchase, lease, or barter) property or services for the direct benefit or use of the United States Government; and (2) substantial involvement is expected between the executive agency and the State, local government, or other recipient when carrying out the activity contemplated in the agreement.” 31 U.S.C. § 6305.

<sup>46</sup> 16 U.S.C. § 462(e).

<sup>47</sup> 16 U.S.C. § 1a-2. In some cases Congress has granted the National Park Service authority to enter into cooperative agreements in program-specific legislation. For example, in the Marsh-Billings-Rockefeller National Historical Park, cooperative partnerships between the National Park Service and specific private entities were directly congressionally authorized. Program-specific legislation may be appropriate in unique circumstances, such as to authorize large-scale projects with substantial non-federal involvement.

<sup>48</sup> More information can be found in the Partnership Legal Primer, Dept. of Interior, Office of the Solicitor (Sept. 2004), available at: <http://www.doi.gov/pmb/partnerships/upload/PartnershipLegalPrimer1stEdition.pdf>.

<sup>49</sup> 16 U.S.C. § 5966.

<sup>50</sup> 16 U.S.C. § 5966(b)(1) (emphasis added).

<sup>51</sup> 16 U.S.C. § 5966(c)-(e). Under the Concessions Management Act, commercial use authorizations can only be granted to children’s camps, outdoor clubs, or nonprofit entities without Secretarial approval.

<sup>52</sup> U.S. Dept. of Interior, National Park Service, Director’s Order #53: Special Park Uses (Feb. 23, 2010), available at: <http://www.nps.gov/policy/DOrders/DO53.htm>.

<sup>53</sup> Management Policies 2006, National Park Service, pg. 112, § 8.6. For example, cultural demonstrators may be authorized to sell printed materials or other items made as a part of an interpretive demonstration or exhibit. *Id.* at pg. 94, § 7.5.7. Limited agricultural activities and independent scientific, archaeological, or other research may also be permitted. *Id.* at pg. 116, § 8.6.7; pg. 61, § 5.1.2.

<sup>54</sup> NPS has previously conducted studies identifying management issues within its leasing program. K. McConnell, S. Hester, & G. Kish, National Park Service Leasing Program Assessment, Final Report: Findings and Recommendations, National Park Service Commercial Services Program and Center for Park Management (Nov. 2010).

<sup>55</sup> *Held in Public Trust: PBS Strategy for Using Historic Buildings*, U.S. General Services Administration, Public Buildings Service, available at: <http://www.gsa.gov/graphics/pbs/HIPT.pdf>.

<sup>56</sup> The Park Service “shall utilize concessions contracts to authorize a person, corporation, or other entity to provide accommodations, facilities, and services to visitors to units of the National Park System.” 16 U.S.C. § 5952 (emphasis added). Additionally, the General Authorities Act prohibits the use of leases “to authorize the lessee to engage in activities that are subject to authorization by the Secretary through a concessions contract, commercial use authorization, or similar instrument.” 16 U.S.C. §1a-2(k).

<sup>57</sup> 36 C.F.R. § 51.3.

<sup>58</sup> Management Policies 2006, National Park Service, pg. 121, § 8.12.

<sup>59</sup> Congressional encouragement for the use of historic leasing has continued over the years as noted by the House of Representatives in this 2011 report. “The Committee believes that historic leases provide an opportunity to attract private

capital and expertise to the challenges of preserving park resources. Under the terms of a historic lease, the lessee agrees to invest in the rehabilitation and maintenance of the leased structure in exchange for the right to use the structure. A historic lease shifts the burden of maintenance to the lessee for the duration of the lease term. Historic leases not only generate revenue, they play a role in rehabilitating, restoring, and maintaining park resources with private funds, saving taxpayer dollars.... Further, the Committee directs the Park Service to provide an inventory of current historic leases, the benefits derived from such leases, and any challenges posed by existing partnerships.” U.S. House, H.R. 2584, 112th Cong., Comm. Rep. No. 112-151 (2011).

<sup>60</sup> Wenk, Daniel, U.S. Dept. of Interior, National Park Service, Policy Memorandum 07-01, Authorizing activities through leases versus concession contracts or commercial use authorizations (May 29, 2007), available at: <http://www.nps.gov/policy/leasingmemo.pdf>. This memo was sent to Regional Directors to address authorizing activities with leases as compared to concession contracts or commercial use authorizations. See also U.S. Dept. of Interior, National Park Service, Director’s Order #38: Real Property Leasing (Jan. 19, 2006).

<sup>61</sup> 105 P.L. 391, 802.

<sup>62</sup> These figures were provided by the NERO business office leasing staff. Other regions are also beginning to collect this data and NPS is attempting to organize it in a database within its Concession Program Center in Denver.

<sup>63</sup> K. McConnell, S. Hester, & G. Kish, National Park Service Leasing Program Assessment, Final Report: Findings and Recommendations, National Park Service Commercial Services Program and Center for Park Management (Nov. 2010).

<sup>64</sup> 16 U.S.C. § 1a-2(k)(4); 36 C.F.R. § 18.5.

<sup>65</sup> 36 C.F.R. § 18.10.

<sup>66</sup> The authors of this report were unable to locate legal authority that clearly defines the length of short and long term leases as those terms are applied by the NPS. The definition of a short term lease as being 60 days or less is alluded to in 36 C.F.R. § 18.9, and in § 8.12.3 of the NPS’s Management Policies, which exclude leases of less than 60 days from formal bidding requirements. Management Policies 2006, National Park Service, pg. 122, § 8.12.3.

<sup>67</sup> This classification of short and long term leases is not required by law or the NPS’s leasing regulations. Instead, these classifications appear to be an internal procedural distinction that has developed over time. Evidence of the classification of leases by length, and the different approval processes that then apply, can be found in the Park Service’s own explanations of its leasing authority included in materials presented to the Fort Hancock FACA committee. See Authorizations for Park Operations (Business Instruments), slide 13, powerpoint available at [http://forthancock21stcentury.org/meeting\\_materials/march\\_12\\_2013](http://forthancock21stcentury.org/meeting_materials/march_12_2013).

<sup>68</sup> The headquarters approval requirement for leases longer than 10 years likely arose as the result of efforts to make review of leases more closely track the process used to review concessions contracts. This is inappropriate and not required by law. Because concessions contracts provide necessary visitor services, they are deserving of greater scrutiny, and the requirement for Secretarial approval of contracts over 10 years is written into the Concessions Management Act. In contrast, historic leases serve primarily to ensure the maintenance and reuse of historic resources that are not needed for park activities, and there is no statutory requirement for greater scrutiny. See Management Policies 2006, National Park Service, pg. 121, § 8.12.

<sup>69</sup> See generally I.R.C. § 47.

<sup>70</sup> Because the HTC is a tax credit against income, it is not available directly to

the National Park Service or directly to nonprofit organizations. However, there are many examples where nonprofit organizations have successfully partnered with for-profit entities to fund rehabilitation and utilize the credit.

<sup>71</sup> Qualified rehabilitation expenses include the cost of the work on the historic building, as well as architectural and engineering fees, site survey fees, legal expenses, development fees, and other construction-related costs. The credit cannot be used to offset costs associated with property acquisition, new additions, new building construction, parking lots, sidewalks, landscaping, furnishings, or other related facilities.

<sup>72</sup> According to the text of the Internal Revenue Code, a lessee may claim the historic rehabilitation tax credit if, when the lessee incurs the qualified rehabilitation expenses, and on the date the rehabilitation is completed, the remaining lease term is less than the recovery period. I.R.C. § 47(c)(2)(B)(vi). The recovery period for nonresidential real property is 39 years. I.R.C. § 168(c). In practice, leases must be longer than 39 years to use the credit. For a lessee (as distinguished from a property owner) to claim the HTC, there must be sufficient indicia of ownership to support the depreciation of property. Tax experts practicing in this area have advised that to satisfy the indicia of ownership test, a lease of 55 years is needed. Some education on this practical limitation to the use of the HTC would be helpful for park staff to understand why longer term leases are necessary.

<sup>73</sup> 16 U.S.C. § 1a-2(k)(4)-(5); see generally 36 C.F.R. Part 18.

<sup>74</sup> U.S. Dept. of Interior, National Park Service, Director's Order #38: Real Property Leasing (Jan. 19, 2006), at pg. 7, Part VII, C(2).

<sup>75</sup> 16 U.S.C. § 470h-3(b).

# Appendix: Historic Leasing Case Studies

The case studies presented here describe examples where the Park Service has entered into agreements with non-federal partners to manage sites within the National Park System. Many of the cases involve successful examples while others highlight the inefficiencies, inconsistencies and unintended consequences sometimes caused by existing Park Service legal and policy requirements. Some of the examples use simple two-party leases to maintain historic sites, while others use a mix of complex leasing, concessions contracts, and public-private partnerships to address large scale restoration and programmatic challenges. These case studies provide an opportunity to develop a better understanding of the challenges Park Service administrators face when making leasing decisions under existing laws, as well as showing how non-federal partnerships can result in successful preservation outcomes.

## **NATIONAL CAPITOL REGION**

### **ANTIETAM NATIONAL BATTLEFIELD**

Starting in 1985, the historic Piper Farm inside the Antietam National Battlefield in Maryland was managed under a 56 year historic lease. Under the lease this iconic landscape was farmed as it was in 1862, allowing park visitors to experience the landscape as it felt at the time of the Civil War battle. The historic farmhouse was also open to guests as a small bed and breakfast. Revenue from both activities was used to maintain the farmhouse and lands to meet the Secretary's Standards for the Treatment of Historic Properties, and to financially support the family that operated the farm and inn. The success of the Piper Farm lease is a good example of how placing reasonable limits on public access to some areas of the site resulted in a preservation success. The leasing arrangement here proved to be a successful method for meeting the public interest in preservation and maintaining an appropriate level of public access. Unfortunately, the leaseholders retired several years ago and the Piper Farm currently sits empty.

### **CHESAPEAKE & OHIO CANAL NATIONAL HISTORICAL PARK**

The Chesapeake and Ohio (C&O) Canal National Historical Park contains one of the most intact and impressive surviving examples of the American canal-building era. The C&O Canal is unique because it remains virtually unbroken and substantially unmodified along its entire 185-mile length. However, the C&O Canal faces a daunting maintenance task in managing more than 1,300 historic structures—possibly the largest number of structures in any unit of the National Park System. This number includes the lockhouses located throughout the park, each of which is approximately 170 years old and listed on the National Register of Historic Places.

To manage the lockkeepers' houses, the park embarked on a unique program called the Canal Quarters Interpretive Program through a public-private

agreement with a nonprofit partner, the C&O Canal Trust. The Trust raised private funds to supplement \$150,000 received by the park from the Save America's Treasures federal grant program in 2004. This mix of federal and private funds was used to undertake restoration efforts. Following restoration, the C&O Canal Trust began to operate a lockhouse rental program through a 2009 cooperative agreement with the National Park Service. Six lockhouses are now restored, furnished, and available to the public to rent for overnight stays. The program interprets the lockhouses' and lockkeepers' history to visitors. Lockhouse 22 and Lockhouse 28 interpret what life was like during the establishment and construction of the canal in the 1830s, while Lockhouse 6 tells the story of the campaign to preserve the canal led by Supreme Court Justice William O. Douglas.

The cooperative agreement authorized the program to operate initially as a three year pilot program. Based on unforeseen delays with the implementation of the pilot program and the timeline for the rehabilitation projects, the pilot program was extended for an additional two years through June 2014. Thus far, the bicycling community has shown a commitment to this program and occupancy rates have increased each year. An Environmental Assessment is scheduled for 2013 to evaluate the current program and alternatives, including a possible expansion of the program to incorporate additional unused historic buildings. The use of leasing to help fund restoration of additional buildings in the park through work with additional partners could also be an option.

## **NORTHEAST REGION**

### **VALLEY FORGE NATIONAL HISTORICAL PARK**

Valley Forge National Historical Park is dedicated to preserving and interpreting the winter encampment site of the Continental Army during the American Revolution. However, the park includes numerous historic structures that post-date the Revolutionary War and are outside the historical time period that is the main interpretive focus of the park. Given funding constraints, the Park Service has been unable to prioritize maintenance for these properties within its own budget and has entered into some historic leases to address the shortfall. For example, in 2009, park staff successfully negotiated a 40 year lease agreement for the David Walker Farmstead, a 3.7-acre National Register-listed site located on the southern boundary of the park. The lessee is the Montessori Children's House of Valley Forge, a nonprofit organization that uses the farmstead as a school. The Montessori school has invested over \$3 million into restoration and maintenance of the farmstead, including funding the removal of non-historic elements, such as an adjacent, non-historic 1958 house.

The Kennedy-Suplee Mansion, a home prominently located near the entrance of Valley Forge National Historic Park, has been successfully leased in the past as an upscale restaurant, but closed in 2005 when the leaseholder filed for bankruptcy. The restaurant had operated under a 55 year lease signed in 1986 that required the lessee to preserve the house. The Park Service issued an RFP for a new lease in 2010 but received no responses. Local Park Service staff attributes the lack of response to the economic downturn. A new RFP is planned for 2013, but NPS's

failure to fully maintain the building has left the mansion in a state of disrepair that will require significant capital investment by any new potential lessee.

In 2012, the Park Service published its intent to make another property in the park, the Philander Chase Knox House, available for a historic lease. The Park Service intends to make the house and its immediate grounds seasonally available as a special events venue. The proposed 5 year lease would require the lessee to maintain the building and the rental proceeds would provide income for additional rehabilitation. The Park Service completed an Environmental Assessment for the site at the end of 2012 and intends to issue a RFP for the site in 2013.

### **CAPE COD NATIONAL SEASHORE**

The Peaked Hills Historic District located within the Cape Cod National Seashore occupies approximately 1,960 acres and was determined eligible for the National Register of Historic Places in 1989 and formally listed in March 2012. The historic district includes 19 dune shacks that are among the most iconic buildings found within the National Park System. The dune shacks were made famous by the naturalist Henry Beston in his classic book, *“The Outermost House,”* published in 1928. In the book, Beston described his experience living in his shack among the dunes surrounded by nature. The popularity of the book ultimately contributed to the founding of the Cape Cod National Seashore. Today, 18 of the 19 dune shacks are owned by the Park Service and are occupied by assorted groups and individuals under a variety of arrangements.

After years of administrative reviews, NPS recently finalized and began implementation of a Dune Shack Historic District Preservation and Use Plan. The Plan is intended to provide direction for the long term protection of the historic district, including the historic structures, cultural landscape, and natural environment. The Plan will be implemented using a range of use authorization instruments, including long term and medium-term leases and public-private cooperative agreements.

Under the Plan, the Park Service anticipates that the rental and partnership agreements for 18 federally owned dune shacks will be composed 40 percent of long term residential leases, 20 percent of medium-term residential or nonprofit organizations leases, and 40 percent of cooperative agreements with nonprofit organizations. The Park Service will have the option to charge less rent and require lessees to fund maintenance themselves, or to set higher rental fees and use the proceeds to fund maintenance and repairs made by the Park Service. The Plan also establishes preservation maintenance practices and consultation processes between the Park Service and private dune shack occupants to ensure that the historic structures are maintained consistent with the Secretary of the Interior’s Standards for the Treatment of Historic Properties.

The Plan increases public access to the shacks by including leaseholders and public-private partners in education and public access activities. There will be a range of opportunities for diverse, low-impact public access to the shacks that balances the need to maintain public access, protect sensitive resources, and provide the privacy required to fully experience dwelling in the dunes. Some of the shacks will provide public access via short term occupancy (1

to 3 weeks) opportunities. These short term opportunities will be provided through competitive programs like artist or writer residency programs, with fair allocation of time ensured via lottery. A longer term occupancy program for caretakers or residential leaseholders will also be established. The Plan's leases and public-private agreements will include provisions requiring day access for the general public through guided ranger walks and authorized dune taxi tours. Independent walk-in day visitors will also be allowed in appropriate cases. To preserve the environment of solitude and contemplation recognized in the eligibility determination of the historic district, the Park Service will provide appropriate signage about the privacy of the shacks to encourage resource sensitive behavior. Overall, the Plan is noteworthy for the way it intends to balance meeting the interests of traditional long term users of the shacks with providing new opportunities for the public to experience the historic district.

Beyond the dune shack program, Cape Cod National Seashore has used its historic leasing authority to preserve other sites within the park unit. The historic Ryder House is currently leased under a long term residential lease that does not require public access to the House's interior. In deciding to authorize this lease, NPS determined that the public interest was sufficiently served with the historic building providing "setting enhancement" for Seashore visitors without the need for public access to the interior. The lease also includes private maintenance requirements whose benefits will accrue to the public. This decision by NPS provides an example that can be applied in other parks where historic buildings are sitting unused because they are not necessary to meet the Park Service's own program or administrative purposes. In cases like the Ryder House, using private funds to ensure the maintenance of the site serves the public interest in preservation.

In contrast to the leasing successes with the new dune shack plan and the Ryder House, the Cape Cod National Seashore has experienced difficulties in leasing other properties in the Park. The Weidlinger House and the Hatch House are two adjacent properties that are essentially identical. Appraisals of the properties were conducted in 2011 by two separate appraisers. The appraised fair market rental value for the Weidlinger House was set at over \$30,000 while the rate for Hatch House was determined to be more than \$56,000. These inexplicably different and significantly above-market values required further research to be conducted at the Park Service's expense. One year later, re-appraisals of the properties determined the fair market rental values to be \$12,000 for Weidlinger, and \$13,200 for Hatch. In the meantime, these properties sat empty.

More successfully, the Park Service recently established a partnership with the Cape Cod Modern House Trust (CCMHT), a nonprofit organization dedicated to the preservation of modernist architecture on Outer Cape Cod. In 2006 CCMHT signed a 20 year lease for the Kugel-Gips House for use as an artist or scholar-in-residence program. CCMHT was able to obtain donations and grants, including \$100,000 from the town of Wellfleet's Community Preservation Act Funds, to complete restoration of the house in 2009. Building on the success of the Kugel-Gips House restoration, CCMHT signed 10 year leases for the Hatch

and Weidlinger Houses following their reappraisal in 2012. The CCHMT plans to rehabilitate the houses for additional artist or scholar-in-residence locations.

### **GATEWAY NATIONAL RECREATION AREA**

Gateway National Recreation Area is an urban park that covers almost 42 square miles within the port district of the New York metropolitan area. The recreation area is composed of three units—Sandy Hook, Jamaica Bay, and Staten Island—which contain a total of 11 park sites in New York and New Jersey. While preservation challenges have existed at this site for decades, the park's needs have grown exponentially as a result of Hurricane Sandy in 2012. Given the magnitude of the rebuilding challenge, creative use of public-private partnerships, an increase in historic leasing, and other innovative approaches are needed more than ever. Past experience with historic leasing and partnerships at this park should provide a guide for moving forward.

For nearly 40 years after establishment of this urban park, the historic aircraft hangers at Floyd Bennett Field in Brooklyn languished, left vacant by the National Park Service. Finally, in 2003 the Park Service entered into a concession contract for one of the historic hangers. The hanger is now operated as the Aviation Sports and Event Center, with indoor basketball, ice hockey, and workout rooms. Under this contract, \$60 million have already been invested in restoration and adaptive re-use of the site.<sup>1</sup>

In the Breezy Point Tip area located on the Rockaway peninsula, the National Park Service spent \$20 million in federal funds to restore the historic Bath House complex and has sought to enter into a concessions agreement with a sole concessioner to operate the site. Unfortunately, taking on responsibility for the entire complex through a concessions contract has proven financially unattractive to sole private operators. Leasing smaller sections of the Bath House to multiple operators is financially viable, at least seasonally. However, negotiating seasonal rentals has proven problematic because National Park Service has limited short term leases to 60 days when the beach season is 120 days. Similarly, NPS has unsuccessfully sought a concessioner to operate the historic riding stable at Fort Tilden. A long term lease might present a viable solution to attract non-federal investment.

The focus on concessions rather than leasing in Gateway may be attributable to the issues that arose in a 60 year lease that the Park Service entered into in 2004 for buildings at Fort Hancock in the Sandy Hook unit. The lease for this large, beautiful complex of historic Army buildings was terminated by NPS in 2009 due to funding challenges faced by the lessee, but also possibly in part because of the political controversy that arose over the exclusively-private uses proposed for these public buildings.<sup>2</sup> Even though the lease was ultimately terminated, leaving these Fort Hancock buildings without a clear future, the public did benefit from the transaction prior to its cancellation. The Chapel and Theater located at the site were restored by the developer using private funds while the lease was active. Now, the Park Service is using its short term leasing authority to make the restored buildings available for special events such as weddings. In addition to the termination of the larger lease, small lessees,



including the local Audubon Chapter and Rutgers University, have chosen not to renew their leases on individual historic buildings at Fort Hancock. These smaller leases were terminated principally because of reappraisal and rent reconsideration issues that made the leases financially unworkable.

In the face of these challenges, the Park Service has recognized the need for a comprehensive approach to preserving and using the buildings at Fort Hancock. The Secretary of the Interior has established the Gateway National Recreation Area Fort Hancock 21st Century Advisory Committee under the Federal Advisory Committee Act, to explore options for the site.<sup>3</sup> The committee is tasked with exploring adaptive reuse options for the site that will complement the park's General Management Plan, which is also currently under review.

### **DELAWARE WATER GAP NATIONAL RECREATION AREA**

The history behind the 1978 establishment of this recreation area in Pennsylvania and New Jersey is unique within the National Park System. Initially these lands in the Delaware River valley were slated for flooding as a part of the Tocks Island Dam project planned by the US Army Corps of Engineers. The Army Corps purchased all of the land in the valley on both sides of the Delaware River for flooding by the reservoir. The purchases included entire villages that were emptied of residents. Ultimately, after much controversy, Congress voted to de-authorize the dam and transfer the lands to the National Park Service for management. This gave the Park Service management responsibility for hundreds of houses, barns, stores and villages, many of which are historic. Today, there are 730 buildings located within the park, with 150 of them occupied and maintained by the Park Service or its partners, another 100 classified as historic but currently standing vacant, and the balance identified for disposal as too dangerous and deteriorated for recovery. Additional maintenance and preservation action is needed immediately to avoid the loss of more of these historic resources.

One inspiring example of successful reuse in the park is the partnership between the Park Service and Peters Valley Craft Center. The Center is a 501(c)(3) nonprofit corporation that was founded in 1970 in partnership with the National Park Service to promote and encourage education and excellence in craft. It is located in historic Peters Valley, which was once the charming farm village of Bevens. Using its leasing authority, the NPS has encouraged the adaptive reuse of buildings in Peters Valley. Today the buildings serve as homes, shops, and studios for a thriving community of artists, who sell their crafts and offer public workshops, youth programs, special studio programs, public exhibitions, demonstrations, and outreach. Peters Valley Craft Center maintains studios in 8 disciplines: Blacksmithing, Ceramics, Fiber Surface Design, Fiber Structure, Fine Metals, Photography, Special Topics and Woodworking. The Center's presence in the Delaware Water Gap National Recreation Area over the last 40 years has helped Peters Valley to become an internationally renowned center of fine crafts and has created a unique experience for visitors, resident artists, and students.

Despite the overwhelming success and the positive example of historic leasing found in Peters Valley, more than 100 historic buildings located elsewhere in the park still lack a management plan for use or adaptive reuse. Most of these historic buildings are single farmhouses with associated barns and outbuildings situated along the Delaware River valley; others are clustered as small villages. One example is Walpack Village, which includes ten houses, churches and former storefronts. Currently, the Park Service conducts interpretive tours in the village during peak tourism season, but little is done (and no non-federal revenue is generated) to maintain the buildings.

Two former inns, Cliff Park and Copper Mine, also sit empty in the park awaiting a lessee or concessioner to restore and operate them. The Park Service issued a Request for Proposals for bids to lease the Cliff Park Inn under a 10 year lease in 2011, but received no bids. In its current condition the facility will require an estimated \$1 million in repairs. The high cost of rehabilitation combined with the relatively short term lease offered by the Park Service is likely the reason why no bids were received. In September 2012, the Park Service re-issued this RFP for a 25 year term, which is still too short to allow the lessee to take advantage of the historic rehabilitation tax credit that could otherwise be available to offset rehabilitation costs. The Cliff Park Inn provides a clear example of the negative effects caused by the Park Service's limiting the term of leases to the shortest possible terms.

A potential bright spot for the future of these historic resources is approximately \$13 million in funding for historic rehabilitation that may become available to the park over the next several years. These funds are anticipated to be received as mitigation payments for impacts caused by a power transmission corridor planned to cross through the park. If repairs are thoughtfully targeted to increase properties' attractiveness to potential lessees, this inflow of capital could provide a big improvement to the future prospects for the park's historic properties.

## **SOUTHEAST REGION**

### **MARTIN LUTHER KING, JR. NATIONAL HISTORIC SITE**

To preserve the historic character of Auburn Avenue, and the block of historic houses that includes the Birth Home of Dr. Martin Luther King, Jr., the National Park Service established the Martin Luther King, Jr. National Historic Site in 1980. The park encompasses 38 acres in the Old Fourth Ward neighborhood of Atlanta. Dr. King's Birth Home is open to visitors. The Park Service funds the maintenance for all of the federally-owned houses within the park unit with revenue generated by leasing 29 of the federally-owned historic buildings for residential purposes. These structures include apartments, duplexes and single family homes. The leasing program has been very popular, leading to the establishment of a waiting list for potential tenants.

In addition to the residential leases, another federally owned building is operated as a commercial barber shop, and the remaining homes are used for park employee housing or used by park partner organizations under cooperative agreements, including the Martin Luther King Jr. Center for Nonviolent Social

Change and the historic Ebenezer Baptist Church. The nearly \$200,000 in annual rental revenue collected through these rental agreements is used to perform major maintenance and restoration in the historic district, while the lessees are individually responsible for funding routine maintenance. This leasing model provides an excellent example for other sites where the Park Service has management responsibility for a large number of historic resources that are unnecessary for federal use or site interpretation.

### **CUMBERLAND ISLAND NATIONAL SEASHORE**

The history of Cumberland Island has been influenced by successive waves of human inhabitants beginning with Indian settlements, transitioning to colonial forts, to active plantation use, and finally to private family estate use by Thomas and Lucy Carnegie and their heirs. Beginning in the early 1950s, local landowners, historic preservationists and conservation advocates began a campaign to add Cumberland Island to the National Park System, which resulted in a successful National Seashore designation in 1972. The park's enabling legislation permitted the owners of improved property within the park's boundaries to reserve for themselves and their successors limited rights of use and occupancy that survived the federal government's acquisition of the island. This required private owners to continue meeting the maintenance needs of many of the island's historic resources. Several privately retained rights and inholdings remain in various parts of the island, while others have recently expired, including five properties with retained rights that expired in 2010 and 2011.

Today, the NPS is responsible for the preservation of most of the Carnegie family's historic mansions and related support structures, four National Register-listed historic districts, including the Dungeness National Historic District, and 87 individual historic structures. Maintaining the historic properties on Cumberland Island has been a management and funding challenge. Cumberland Island National Seashore is located on a true island without a bridge connecting it to the mainland. This complicates access to the seashore and requires visitors to take a ferry to and from the island. The majority of the acreage outside of the historic districts is managed by the Park Service as wilderness pursuant to a separate congressional Wilderness Act designation. Restrictions required by the wilderness designation have further complicated management decisions.

The National Park Service has faced the challenge of balancing its cultural stewardship responsibilities with protection of wilderness values in making management decisions in this park for decades. As recently as 1999, the Service engaged a broad array of stakeholders in a formal negotiation designed to reach consensus on matters of public access and use. Although this effort produced an agreement signed by all participating parties, one of those participants sued the Park Service shortly thereafter. Congress responded by enacting an amendment to the seashore's wilderness designation that removed the wilderness designation from the main park sand route so that both inholders and visitors could traverse the road in motorized vehicles in perpetuity. This outcome increased public access to several historic sites, including the historic

Plum Orchard Mansion, and also enhanced the Park Service's focus on the value of the island's historic sites for public interpretation and preservation.

To address the impending expiration of retained rights, the Park Service recently initiated a planning process focused on seven properties. One of the properties considered during this process was the Grange, a large house including associated buildings that is listed on the National Register of Historic Places. In its draft Plan, NPS determined that a residential lease of the Grange would be a private exclusive use and was disfavored. After reviewing comments on the draft Plan challenging this conclusion, the NPS acknowledged that it was possible to use historic leasing for combined residential and public education uses and that this result could be the best choice for future management of the Grange. This position has enhanced the flexibility available to the NPS as it seeks a partner to maintain the Grange.<sup>4</sup>

The final Plan approved in July 2012 calls for restoration of the Grange for use as an environmental education center. Unfortunately, policy interpretations relied on in the Plan continue to limit the options available to the Park Service to preserve and manage the Grange. For example, the Plan mistakenly indicates that overnight accommodations in a park can only be provided by a concessions contract. This inaccurate policy interpretation rules out the possibility of using a historic lease to provide overnight accommodations and constricts the available management alternatives. The Plan also confuses the management requirements under the Wilderness Act with the agency's preservation responsibilities under the Organic Act and the National Historic Preservation Act. The Plan states that allowing a commercial or residential use in the Dungeness Historic District (a section of the island that is not designated as wilderness) would adversely affect primitive wilderness conservation efforts. These policy determinations unnecessarily limit the options available to the Park Service to fund preservation of the Grange and the island's other historic resources.

### **CAPE LOOKOUT NATIONAL SEASHORE**

The historic village of Portsmouth located within Cape Lookout National Seashore in North Carolina includes 20 houses located on Portsmouth Island. Until recently, several of the houses were leased to private individuals. Three of those leases expired in 2012, another will expire in 2013, and the last one is scheduled to expire in 2016. Park personnel are beginning a planning process to determine options for the currently leased houses, but their future is uncertain. For the remaining houses, the Park Service has indicated its intent to provide interpretive tours at five of the sites, while most of the other houses are stabilized, but left vacant. Until the planning process is complete and decisions are made regarding how these historic houses will be used and maintained, it seems likely that most of these houses will sit empty and minimally maintained for an extended period.

There are two examples of houses on the island that have been restored and placed into public use. A nonprofit partner, Friends of Portsmouth Island, has taken responsibility for restoration and maintenance of the Henry Piggott House. The group has opened the house to visitors under a special use permit. The

Park Service has also adapted the Theodore and Annie Salter House for use as restroom facilities for park visitors.

## **MIDWEST REGION**

### **CUYAHOGA VALLEY NATIONAL PARK**

Of all of the units of the National Park System, Cuyahoga Valley National Park has perhaps been the most creative in using a variety of leases, partnership agreements, concessions contracts and sales with easements to restore and maintain the historic properties that make up the park's cultural landscape. To ensure flexibility to support its leasing needs, the park's staff developed two separate leasing programs. The "Countryside Program" was developed to address farms and associated historic buildings, and the "Historic Property Leasing Program" was established to handle individual buildings.

In its "Countryside Program," the park has been successful in leasing farms to private operators. For example, in 1999 the park entered into a cooperative agreement with the nonprofit Cuyahoga Valley Countryside Conservancy (CVCC). Under the terms of the agreement, CVCC coordinates efforts to rehabilitate a working agricultural landscape within the park. Prior to developing this leasing program, the Park Service used its own funds to repair and restore the farmhouses in the park and only required its authorized farmers to maintain high priority farm fields and cultural landscapes. Now, through the cooperative agreement with CVCC, the park has been able to shift historic maintenance responsibilities almost entirely onto the lessees, and more of the farmlands are being used and maintained. At present, there are eleven farms under lease with the potential for four more by 2015.

Under the park's "Historic Property Leasing Program," lessees are required to pay for repair and rehabilitation of the historic house and to pay a rental amount that takes this private investment into account. Several historic properties have been successfully leased under these terms. Notably, since 1987 the National Register-listed Inn at Brandywine Falls has operated under a 50 year lease as a bed and breakfast that makes 6 rooms available to guests on a year-round basis. However, other attempts to use leasing to manage individual historic houses in the park have proven problematic.

For example, in 2009, park staff requested approval to convert an existing concessions contract at the historic George Stanford House into a lease. The change was requested because the hostel that had been operating under a concessions contract had become financially nonviable. The hostel's financial problems were caused by a decline in volunteer support and because their annual gross revenue of \$38,000-\$64,000 was simply insufficient to cover expenses. Permission was requested to lease the house for classroom and dormitory use for educational programs, for outside group rentals, and for overnight accommodations for park visitors similar to those that had been provided by the hostel. Approval was granted to lease the house for classroom and dormitory use and for outside group rentals, but permission to use a lease to authorize overnight accommodations was denied. The Park Service made this

decision because they determined that group rentals at the George Stanford House would be used for non-park related activities, i.e. that the rentals were not providing “visitor services.” In contrast, the Park Service determined that overnight accommodations were intended to provide “visitor services” that the Concessions Management Act requires to be provided through a concessions contract. In reaching this decision, the Park Service assumed that patrons of the rental space, such as business groups, would choose it for its general characteristics as a meeting space—not because it was located within the park. Overnight visitors were assumed to visit because the accommodations were located in the park. As a result of this decision limiting overnight use to educational activities or activities under concessions contracts, the hostel closed and the historic house sat empty.

The George Stanford House did eventually re-open as a bed and breakfast providing lodging to park visitors in 2011, following a rehabilitation financed by the Conservancy for the Cuyahoga Valley National Park. The Conservancy is operating the business under a commercial use authorization. While this authorization has served to bring the building back into use, it is not ideal because the Conservancy is subject to the regulatory restrictions governing commercial use authorizations, which limit the value of onsite activities to \$25,000 annually. This places a limit on the number of annual visitors to the site.

This park has had difficulties with leasing other sites as well, due to appraisal issues. In 2009 a request for proposals for lease of the Packard-Dobbler House did not elicit a single response. This is likely because the RFP failed to adjust its appraisal of fair market value to take the housing market downturn into account. Had the RFP responded to market realities and offered a discount on rent in return for capital investment in the property, perhaps a proposal would have been made. The inflexibility of the appraisal process currently used by the Park Service makes a quick response to changes in the real estate market almost impossible.

### **INDIANA DUNES NATIONAL LAKESHORE**

In recent years, Indiana Dunes National Lakeshore has taken positive steps to secure leases of a number of the sixty historic properties in the park, including leasing five “Century of Progress” houses that were built for the Chicago World’s Fair and relocated to the lakeshore. To accomplish this, the park is entering into a master lease with Indiana Landmarks, a 501(c)(3) nonprofit. Indiana Landmarks will have overall responsibility for the care of the properties under the terms of the master lease, but will be able to sub-lease the individual houses and monitor compliance.

The park also recently assumed management responsibility for four other houses along the lakeshore following the expiration of the Reservation of Use and Occupancy Agreements held by private owners. The park intends to offer the buildings for lease to be operated as bed and breakfast accommodations. This decision was made possible following the Park Service’s determination that a bed and breakfast operation is not “necessary” to provide “visitor services” at the park, and thus does not require the use of a concessions contract.

### **ISLE ROYALE NATIONAL PARK**

Isle Royale National Park is a remote island archipelago located in the northwest corner of Lake Superior that is best known for its famous 50 year moose and wolf predator/prey study. In addition to its natural resources, the park has a diverse collection of historic and cultural resources. These cultural resources include: 19 historic districts and cultural landscapes, 140 National Register-eligible structures, 4 lighthouses, over 100 archeological sites, thousands of artifacts, many fishing and recreational camps, and many largely undocumented ethnographic cultural resources, traditions and practices.

From its beginnings as a national park in 1940, Isle Royale's cultural resources have suffered as a result of insufficient resources dedicated to their care. Limited staffing, funding, exposure to the elements, and lack of long term management plans have threatened Isle Royale, giving it a "critical" rating in a 2011 National Parks Conservation Association report, the lowest of any national park evaluated.<sup>5</sup>

Some of Isle Royale's most important historic resources are the seasonal fishing and wilderness camps clustered in protected bays and channels along the park's shoreline. These properties, usually consisting of a rustic cabin, a boathouse, and a few outbuildings, have been preserved by generations of private owners. Yet they now face an uncertain future as leaseholders pass away, and special use and other occupancy agreements that allowed private residential use coupled with preservation duties expire. There is no indication that federal funding alone will be sufficient to maintain these sites in the immediate future. Given this uncertain future and no assurance of their continued occupancy, the families who have maintained these sites are unsure whether they will be allowed to continue this role. There is substantial potential for historic leasing to help preserve properties on Isle Royale that would otherwise likely fall into disrepair. Recently, the park began development of a Cultural Resource Management Plan that has the opportunity to consider historic leasing.

### **APOSTLE ISLANDS NATIONAL LAKESHORE**

At the Apostle Islands National Lakeshore, natural and cultural resources create a beautiful and unique park experience on islands along the coast of Lake Superior. The National Park Service has not used its leasing authority in this park unit. In contrast to the active interest taken by the Park Service in working with non-federal partners to manage historic properties at other parks within the Midwest Region, Apostle Islands has not established any preservation partnerships through leasing. Similar to the situation faced in other NPS units, the Park Service's historic resource maintenance responsibilities at Apostle Islands are increasing as the rights of private rights holders expire. These rights holders provide ongoing restoration and maintenance for historic sites within the park, but their incentive to continue this work will decline in the absence of formal arrangements for continuing use and occupancy. The additional responsibility of maintaining these properties will add to the park's existing historic property maintenance responsibilities, which include eight lighthouses on six islands and other historic structures. The lack of leases to help meet this park's maintenance responsibilities provides another clear example of the

need for a stronger national policy to encourage the use of historic leases in appropriate circumstances.

### **HOT SPRINGS NATIONAL PARK**

Hot Springs National Park in central Arkansas is located at the site of natural springs that supply over one million gallons of water daily that are used for therapeutic baths. The central focus of the park is Bathhouse Row, which is composed of eight historic bathhouses constructed between 1892 and 1923. By the 1960s, public interest in the therapeutic baths had begun to wane. As a result, the bathhouses began to close, leaving the majority empty by the turn of the century. Only the Buckstaff Bathhouse has continuously operated under a concessions agreement providing therapeutic baths since its opening in 1912. In 2004, to address the remaining seven bathhouses, the National Park Service began an ambitious effort to restore and return these historic properties to productive use. Today, only two of the bathhouses remain empty and the others have been restored and are used by the Park Service or tenants.

Historic leasing and the historic tax credit have played an integral role in financing the rehabilitation of the bathhouses. For example, in 2008 the Quapaw Bathhouse became the first of the bathhouses renovated and reopened to the public through a historic lease. It is currently operated as a modern spa facility. The Fordyce Bathhouse ceased operating as a bathhouse in 1962, but now houses the park's visitor center. The Lamar Bathhouse is used by the Park Service for office space, a museum space and for the park's store—the Bathhouse Row Emporium. The Ozark Bathhouse reopened under a lease to house the Museum of Contemporary Art of Hot Springs. The Superior Bathhouse closed to bathers in 1983 but has recently been renovated and will operate under a historic lease as the new home of the Superior Bathhouse Brewery and Distillery. The Brewery uses the park's spring waters to create its brews, and a tasting room opened in July 2013. The Maurice Bathhouse and the Hale Bathhouse are still waiting for a lessee or other non-federal partner to step forward with a plan and sufficient funding for an appropriate adaptive reuse.

### **INTERMOUNTAIN REGION**

There are currently no leases of historic structures in any park in the Intermountain Region. Instead, the Park Service has used cooperative agreements with nonprofit organizations to authorize non-federal uses. Under these agreements, nonprofit organizations manage their own programs in Park Service-owned structures. These agreements have varying requirements for funding of repairs, with primary maintenance responsibility assigned to the Park Service itself in some instances, and delegated to the partner organization in others.

Examples of the use of cooperative agreements can be found in Grand Teton National Park where the nonprofit Murie Center operates the historic Murie Ranch under a five year cooperative agreement. Under the agreement, the Murie Center operates educational programs and hosts park visitors while performing minimal maintenance on the historic buildings. Under this short term agreement, the Park Service retains responsibility for major restoration and repairs. Another



example in Grand Teton National Park is the ten year general agreement between the National Park Service and the University of Wyoming that includes the 16 historic buildings of the AMK Ranch. The University is using the ranch's buildings as a scientific research station capable of housing 55 scientists. Under the agreement, the University has invested over \$100,000 in restoration and repairs.

The staff at Grand Teton is currently preparing a comprehensive Historic Properties Management Plan. This plan will provide guidance for the management of historic properties, with a focus on the 14 National Register-eligible properties that are currently without an identified use or are in poor condition. Historic leasing should be considered as an important option during this planning process.

At Glacier National Park, the Park Service has taken over 18 cabins on the shore of Lake McDonald that were formerly inholdings. The Park Service is in the process of developing a Cabin Use Plan that will consider a variety of use options, including historic leasing. An option for some of the cabins could be to provide an opportunity for private residential occupants to use and maintain the property through a competitive selection process. Other cabins could be offered to provide commercial services through either a lease or concessions contract.

In Rocky Mountain National Park, a private lease may be used for the National Register-listed Leiffer House and its associated 12 acres. The park's administrators are using this approach because, while the house's rustic architecture visually enhances the cultural landscape, public use of the property is not envisioned as a necessary part of the park's interpretive programs. Attracting a private lessee who can shoulder the maintenance costs will preserve the house as a visual enhancement for current park visitors and ensure it is available in the future should the park's operational or visitor services needs change.

## **ALASKA REGION**

### **KLONDIKE GOLD RUSH NATIONAL HISTORIC PARK**

The National Park Service has acquired and restored many of the most historic buildings along the main thoroughfare in Skagway, Alaska to ensure protection of the cultural landscape features of the Klondike Gold Rush National Historical Park. Local park administrators began an active push in 1986 to use leases here that has been very successful. The park is a major destination for cruise ships and records the highest annual visitation numbers of any Park Service site in Alaska. Seven historic leases have been extended to commercial businesses in the park that cater to tourists. Under these leases, the Park Service received \$368,572 in rent in 2012, which was used to fund historic property maintenance.

There are some additional opportunities for the use of leasing in Alaska. For example, potential for leasing exists at Wrangall-St. Elias National Park in and around the historic mining district of Kennicott. However, the site's remoteness and small visitation numbers may serve as inhibitors to attracting non-federal investments.

## PACIFIC WEST REGION

### GOLDEN GATE NATIONAL RECREATION AREA

The Golden Gate National Recreation Area is a large park unit that spans multiple sites across the greater San Francisco Bay region. Park Service personnel have successfully used cooperative agreements to work with a diverse array of local partners to provide assistance and funding for historic facility repairs within this park unit. One good example is the cooperative agreement with the Golden Gate National Parks Conservancy. The Conservancy, which began its work solely as an operator of park bookstores, has dramatically increased its capacity. It has contributed more than \$243 million in funding to the park, as well as coordinated volunteer projects, and developed stewardship and educational programs. In addition to the agreement with the Conservancy, there are currently 30 other nonprofit organizations that have entered into cooperative agreements with the National Park Service to occupy and maintain approximately 100 historic structures within the park, ensuring that the maintenance for more than 1 million square feet of interior space is funded by non-federal sources.

In addition to its success with cooperative agreements, the NPS has entered into several complex leases with partners. The Fort Mason Center is a nonprofit arts and cultural center housed at the historic military base site. The Center serves as the home for over 15 primarily arts-related small businesses and nonprofit organizations that offer services ranging from a used book store to a vegetarian restaurant. The Center also offers the former Officers Club for rent as public event space. For over 30 years, the Center operated under a cooperative agreement, but in 2005 the relationship was converted to a lease. The lease includes all of the historic buildings in Lower Fort Mason, which allows the Center to manage sub-leases with a variety of organizations. This conversion provided greater stability and assurances of continued operation to the Center and its sub-lessees. The National Park Service was assured of significant and continued investment in maintenance by the lessee in return.

To build on this success, the National Park Service is currently soliciting proposals to enter into a similar master residential leasing agreement to manage and privately fund the maintenance of the historic buildings in Upper Fort Mason. The proposed master lease will include 25 buildings that contain 36 housing units. This master commercial lease will allow the lessee to sublease the 36 units to individual residential tenants.

Another major success story is found north of the Golden Gate Bridge at Fort Baker in Sausalito. The National Park Service administers Fort Baker under a long term lease. Through the lease, former officer's residences at Fort Baker have been impeccably restored and transformed into the Cavallo Point, the Lodge at the Golden Gate. Without the investment of private funds and the federal historic tax credit, it is likely that these beautifully restored buildings would be sitting unused. Instead, they are available to the public as hotel accommodations.

Louis' Restaurant, a small diner in the Sutro district of the park, is another success story. The restaurant has been privately operated by the Hontalas Family since 1937 and is currently operating under a 10 year competitively selected

lease. Nearby, the more upscale Cliff House operates under a concessions contract. The different choice of instrument here is an example of the Park Service putting the greater flexibility of its leasing authority to good use. The small diner is only a marginally profitable business, and the ability to operate flexibly under a lease is integral to its successful lean operating model.

#### **SAN FRANCISCO MARITIME NATIONAL HISTORICAL PARK**

The Argonaut Hotel is another positive leasing example in the Pacific West Region. The hotel is located in the century-old Haslett Warehouse within the San Francisco Maritime National Historical Park. Under a 60 year lease this one-time fish cannery is now open to the public as a hotel. The rehabilitated historic building includes the park's visitor center onsite. The length of the lease term allowed the hotel operators to qualify for federal historic tax credits, which made the building's rehabilitation financially feasible.

## APPENDIX NOTES

<sup>1</sup> Two additional hangers have been proposed for leasing to Transcontinental Pipeline Company to house operations related to a compressor station needed for a high pressure natural gas pipeline that has been authorized to run through Gateway National Recreation Area. 126 Stat. 1461; 112 P.L. 197 (Nov. 27, 2012).

<sup>2</sup> *Save Sandy Hook Corp. v. United States DOI*, 2007 U.S. Dist. LEXIS 67700 (D.N.J. Sept. 13, 2007), aff'd, *Save Sandy Hook Corp. v. United States DOI*, 293 Fed. Appx. 896 (3d Cir. 2008). This is the only case uncovered during research for this report that addresses the Park Service's authority to enter into long term lease agreements for publicly owned property. The Court affirmed the NPS decision to extend a private lease to manage this site. The lease was cancelled for other reasons after the case concluded. NPS cited the private lessee's inability to secure sufficient funding to manage the site as the reason for the project's cancellation.

<sup>3</sup> Fort Hancock 21st Century Federal Advisory Committee, available at <http://forthancock21stcentury.org/>.

<sup>4</sup> NPS is currently developing a "Historic Structures Report" addressing the needs of the Grange. This report is intended to guide restoration and adaptive use decisions. Additionally, a five-phase repair and restoration project was begun in 2012. Phase 1 included foundation and termite damage repair at a cost to the NPS of \$160,000. Phases 2-4 are expected to use NPS funds to complete basic repairs and historic restoration. For Phase 5, the NPS hopes to work with a nonprofit education partner to develop a plan for adaptive re-use of the interior for classrooms and laboratory space. As of the date this report was finalized, no nonprofit partner with sufficient funds to contribute to the project has entered into an agreement with the NPS.

<sup>5</sup> *National Parks of the Great Lakes*, National Parks Conservation Association, Center for the State of the Parks: Park Assessments, July 2007, available at: [http://www.npca.org/about-us/center-for-park-research/stateoftheparks/great\\_lakes/](http://www.npca.org/about-us/center-for-park-research/stateoftheparks/great_lakes/).



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