

FEDERAL INTEREST IN LEGISLATION TO PRESERVE HISTORIC SITES

*By Rogers W. Young**

The bright and promising facets of the Federal Government's interest in the conservation of our historical and archeological heritage did not become the "many splendored thing" of today without the prism undergoing some vigorous polishing along the way. You will be interested to know that in the past 100 years or more the Federal Government has blown hot and has blown cold, but is now warmer in its support of this great endeavor. Perhaps we can decipher certain trends and patterns over the years. At first, in the mid-19th century the Federal Government turned its back on the need for saving the great sites of our history. For example, we find the Congress rejecting the opportunity to save Mount Vernon. By 1864, the Congress was willing to pass a special act to turn the historic Yosemite Valley in California over to the State for preservation, especially so since there were groups in the State desiring to save the Valley. We should note, however, that the Yosemite grant was of national import because, in its object here, Congress first announced the principle and express condition that such Federal land was to be held by the State for public use, resort and recreation and be inalienable for all time.

When we come to the setting aside of the vast scientific and historic reaches of the Yellowstone, there was no state or territory or local groups available to preserve the region and the park's supporters had to turn to a reluctant Congress and the Yellowstone Act of 1872 to protect the area. Certainly, Yellowstone marked the beginning of outright Federal protection in this field. Incidentally, when the Wyoming Territorial Legislature passed acts in 1884 to share control of the Yellowstone with the Federal Government, this was resisted in Washington and the acts rescinded. In the meantime, the second national park, on historic Mackinac Island in Michigan, was created in 1874 under the War Department with the provision that it would eventually be administered by the State and this became a fact when

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national park status was withdrawn. In these early instances we see local interests, business, historical, or scientific, turning to the Federal Government for preservation help, but they did not always get it in the way they expected. Either the responsibility was turned back to local agencies or governmental bodies yet unprepared for such responsibility, or the Federal Government undertook it, but reluctantly and without a concerted national plan.

Vandals and souvenir hunters, exposed by scientists and a few other public-minded citizens of the American Southwest, really pricked awake the conscience of the Federal Government to the beginning of Federal preservation of our antiquities. In 1899, the Congress of the United States first established a Federal archeological reservation by authorizing the President to reserve from the public domain the site of Casa Grande, the remarkable prehistoric ruin in southern Arizona.

About this time, we can trace another turning by local groups to the Federal Government for it to undertake further historical preservation activities. This appeared in another part of the country and for another period of history. Veterans of the Civil War were intimately concerned with the historic battlefields where they had fought. Thirty years after the War they were highly organized and were politically powerful. As a result of their efforts, the first of a substantial number of national military parks was authorized by an act of Congress in 1890. The Chickamauga Battlefield in Georgia and the related battlefield in Chattanooga, Tennessee, were set aside that year and was followed by Shiloh in 1894 and Gettysburg in 1895. The Peterson House in Washington, D. C., where the martyred Lincoln passed away, another landmark of this period of history, was authorized for preservation in 1896, and the scene of the Siege of Vicksburg was also saved by the Federal Government in 1899.

At the urging of local associations and individuals, Congress continued to save isolated military and historic sites through separate pieces of legislation, but on a sporadic basis between 1910 and 1930. Examples of sites preserved in this manner include: Big Hole Battlefield, Montana, the scene of Chief Joseph's final Indian resistance to white expansion in the West, established in 1910; the site of the explorer Cabrillo's landfall in 1542 in San Diego Bay, established in 1913; the Revolutionary battlefield at Guilford Courthouse in North Carolina, established in 1917; the landmark on the Oregon Trail at Scotts Bluff in Nebraska, created in 1919; and two

outstanding historic sites in the East in 1930, including the scene of Cornwallis' surrender at Yorktown, Virginia, first known as Colonial National Monument, and the site of George Washington's Birthplace at Wakefield, Virginia. These actions, we can see, did not provide a general legislative principle of nationwide application, but instead were a series of isolated legislative precedents.

However, this had come about to a limited degree, in the meantime, soon after 1900. Growing consciousness of Federal responsibility for the preservation of ancient sites and structures in the great Southwest finally found expression in the Antiquities Act of 1906. It was the first of three great landmarks of Federal legislation, setting forth the general principle of the Federal Government's responsibility for the preservation of its national historical and archeological treasures. This 1906 Act was to lay the foundation for a program of preservation which continues actively to be of importance today.

By this Act, the President was given general authority to establish national monuments by proclamation on lands owned or controlled by the Federal Government. This was to preserve historic landmarks, historic or prehistoric structures, or other objects of scientific interest thereon for the benefit of the Nation. The Act also laid the basis for the regulations governing archeological or other scientific investigations of antiquities situated on Federal land. Under this authority a number of noteworthy historic and prehistoric areas situated in the Southwest were soon proclaimed national monuments, including El Morro and Gran Quivira in New Mexico, Montezuma Castle, Tumacacori, and Navajo in Arizona.

We must emphasize that the Antiquities Act is limited exclusively to the preservation of antiquities situated on land belonging or donated to the United States. It contains three principal provisions, each concerned with the solving of a part of the preservation problem. The first of these is aimed at relic hunters, vandals, and other unauthorized intruders on the public domain. It provides that any person who shall appropriate, excavate, injure or destroy any historic or prehistoric ruin or monument, or any object of antiquity, situated on lands owned or controlled by the government of the United States, without permission, shall be subject to fine or imprisonment. Experience has shown that this provision is very useful, but in any isolated area it has proved difficult to enforce.

The second principal provision of the Act is directed to providing the

basic legal authority under which exceptionally important areas can be set aside in perpetuity as national monuments. It authorizes the President of the United States to declare, by public proclamation, historic landmarks, historic and prehistoric structures, and other objects of historic or scientific interest situated on lands owned or controlled by the United States to be national monuments.

The third principal provision of the Act is designed to provide the basis for regulated access by scientific institutions to archeological sites situated on Federal lands. Since Federal lands are administered by the Secretaries of Interior, Agriculture, and Defense, the Act authorizing each of these officials to grant permits to qualified institutions for examination of ruins, the excavation of archeological sites, and the gathering of objects of antiquity on lands under their respective jurisdictions.

The Antiquities Act had been in force for only a decade when the National Park Service was created by Act of Congress in 1916. Here we find a second legislative medium for broadening Federal control and administration of archeological and historic sites of national importance. The organic act of 1916, creating the National Park Service, contains the classic expression of the fundamental purposes of the national parks and monuments, which is "to conserve the scenery and the natural and historic objects and the wildlife therein and to provide for the enjoyment of the same in such manner and by such means as will leave them unimpaired for the enjoyment of future generations." When this fundamental principle of land use was penned by Frederick Law Olmsted, Jr., distinguished American landscape architect, it was little realized what an impact would be made upon the preservation of our archeological, historical, and natural resources through the agency of the National Park Service.

The concept of preserving and utilizing park and monument properties only in such manner as would leave them unimpaired for the enjoyment of future generations has profoundly influenced the management processes of the National Park System. It has proved a bulwark of strength against hasty and ill-considered development, over-use, and encroachments of all sorts. As a guiding principle for the preservation and use of national historic and prehistoric properties, it stands forth as an unimpeachable ideal.

By 1933 the approximately 80 historical and archeological areas previously acquired by the Federal Government had been placed under the administration of the National Park Service. By 1960, this group has grown

to 97 historical areas and 18 archeological areas preserved by the Federal Government as a part of the National Park System.

By the early 1930's still another turn, and a new pattern, took place in the Federal Government's interest in the conservation of our national historical and archeological heritage. On the one hand, the Historic Sites Act, adopted August 21, 1935, was a general Federal statute authorizing a national preservation program for historic sites not already in Federal ownership. On the other hand, it authorized the Federal Government to turn to states, societies, or individuals for assistance with the preservation of historic sites of national importance.

The new law greatly clarified and emphasized the national policy and granted important new powers, duties, and functions to the Secretary of the Interior to make possible the execution of a broadly-conceived national program of preservation. The statement of policy in the preamble of this Act makes it clear "that it is a national policy to preserve for public use historic sites, buildings, and objects of national significance for the inspiration and benefit of the people of the United States."

The first group of powers provides for the surveys, researches, and investigations necessary to determine the sites and buildings situated throughout the Nation which possess exceptional value as commemorating or illustrating the history of the United States.

A national program to conduct such a survey, originally called the Historic Sites Survey, was undertaken in the period 1937-1941, but was brought to a close by the inception of World War II. Under the MISSION 66 program of the National Park System, the survey was reactivated in 1956 under the title of National Survey of Historic Sites and Buildings, and has concentrated its efforts largely in the western half of the United States, although the reappraisal of earlier studies in the East has also been undertaken. It is the present plan of the National Park Service to complete the new studies by 1962 and to publish its results for the information and guidance of the public.

Authority was next granted to the Secretary to acquire in the name of the United States for the purpose of the Act, any personal or real property, by gift, purchase, or otherwise. This authority was limited in two ways. First, no property owned by any religious or educational institution, or otherwise owned and administered for public benefit, may be acquired without the consent of the owner. Second, no property of any kind may

be acquired or contracted for, which will obligate the general fund of the Treasury, unless Congress has appropriated money which is available for that purpose. Through its control of appropriations, Congress thus still retains the power to determine the extent of the national preservation program to be developed under the provisions of the Historic Sites Act. Unlike European historical preservation law, the Historic Sites Act does not authorize the Federal Government to take private historical property by right of eminent domain.

Hundreds of historic houses and other similar properties operated for public benefit in the United States are owned and maintained by local governments or societies. Authority was given to the Secretary to turn to these owners in a program of mutual cooperation for preservation purposes. He can contract and make cooperative agreements with states, municipal subdivisions, corporations, and associations or individuals, to protect, preserve, maintain or operate any historic or archeological building, site, or object. This is regardless of whether title is vested in the United States. Such agreements calling for the spending of Federal funds are contingent upon Congress providing the money for the purpose. However, the Secretary is not empowered to enter into cooperative agreements for the preservation of sites and buildings of merely state or local importance, but only for those of national significance.

The Act also established a national advisory group known as the Advisory Board on National Parks, Historic Sites, Buildings, and Monuments, composed of not to exceed 11 persons, including representatives competent in the fields of history, archeology, architecture and human geography, all of whom serve without salary. The Board has no administrative responsibilities and is purely advisory to the Secretary of the Interior with regard to questions arising on park and historical preservation matters. However, the Board has taken a leading role in evaluating and classifying those historic and archeologic sites in the United States which are worthy of preservation as a recognized part of our national heritage.

Finally, the Secretary was granted authority to restore, reconstruct, rehabilitate, preserve and maintain historic or prehistoric sites, buildings, and objects, which are of national importance, provided the Congress has appropriated funds for such purposes.

In the period between the passage of the Historic Sites Act in 1935 and the year 1960, results under this Act in the historical conservation field

have been significant. A total of 11 national historic sites has been designated by the Secretary of the Interior, but continue in the ownership and under the administration of private organizations and agencies. Included in this group are such sites as the portion of Jamestown Island, Virginia, administered by the Association for the Preservation of Virginia Antiquities; St. Paul's Church, Eastchester, Long Island, New York (associated with Zenger and freedom of the press); San Jose Mission in San Antonio, Texas; McLoughlin House (home of the Hudson Bay Factor), Oregon City, Oregon; the Golden Spike site where the transcontinental railroads met on Promontory Summit in Utah; the Virgin Islands National Historic Site, scene of Danish colonial efforts at Christiansted on St. Croix Island; and Chimney Rock, a landmark on the Old Oregon Trail in western Nebraska. This period also saw the establishment of an equal number of national historic sites in the ownership of the Federal Government. These range from the ancient Spanish fortifications at San Juan, in Puerto Rico, to the recently-designated Minute Man site along the route of the Lexington-Concord Road in Massachusetts.

Besides the designation of these 22 national historic sites and the evaluation of many others, much basic data has been gathered under the provisions of the Historic Sites Act that has been useful to the Executive and Legislative branches of the Federal Government in considering proposed legislation for the establishment of new areas. Policies for the preservation and restoration of historic sites have been formulated and, above all, a better understanding of the historical and archeological resources of the Nation has been realized, particularly as the result of the nationwide survey of historical and archeological sites begun in the period 1937-1941 and reopened in 1956.

Moving to the post-World War II period, we can discern a growing trend for the Federal government to work closer with state and local agencies concerned with historical conservation. Supplementary Federal acts passed in this period permit the Federal Government to turn more and more to state and local agencies for assistance and even to give these agencies certain Federal historical properties for ownership and administration. Certainly, the object of this "give-away" program is one to which nobody should object!

For example, since 1948, the National Park Service has been active in helping states and local communities acquire and administer many sites of

unusual regional historical significance. These were owned by the Federal Government and otherwise may have been left unrecognized as historic sites. This cooperative work has been done under the Act of June 10, 1948. It marked a definite step forward in the recognition by the Federal Government of the desirability of historical conservation on the part of several governmental levels throughout the Nation. It became a new landmark in the field of Federal legislation relating to historic sites conservation.

The Act of 1948 was an amendment and outgrowth of the Surplus Property Act of 1944. The earlier act was intended only as an expedient in the Nation's reconversion from a war to a peace economy, rather than as a permanent procedure for the disposition of surplus Federal property. Congress soon heard outcries against the manner in which the 1944 Act proposed to "sell off," in a callous way, the surplus "Old Fort" sites and military reservations, naval reservations, obsolete lighthouses, and other Federal properties of historical value. Many of these, over a period of more than 100 years, had become community landmarks throughout the Nation, but were no longer needed for their basic purposes. One of the most notable of these old fort properties, saved early after the passage of the 1948 Act, is Fort Wayne in Detroit, Michigan. It was acquired by the City of Detroit and has been developed as a fine historical monument.

Fort Wayne was the subject of an historic and impassioned plea in the Congress by the late Senator Arthur E. Vandenberg, of Michigan, who stated, among other things, that he vigorously opposed the outright sale of old Fort Wayne for commercial use as it "represents one of those sentimental attachments which will not be lightly dismissed by those who attribute appropriate values to patriotic emotions." And he also noted that "communities which have preserved significant historical sites and buildings derive much benefit from them and stimulation of civic pride and national patriotism." Senator Vandenberg urged the Senate to enact a general piece of Federal legislation to preserve these old community landmarks, and urged the Senate not to set a precedent by selling Fort Wayne, as he trusted that "our people will never lose the desire to preserve the historic past as a promise of peace in the future."

In adopting the Act of 1948, the Congress recognized that these old fort structures or other well-known Federal reservations possessed, in greater or lesser degree, definite historical values on either a national, state, or local level. They were recognized as being physical documents exemplify-

ing important phases of the military, economic, social or political development of the Nation as a whole, or of some particular section of it. These areas were seen to constitute a significant reservoir of American historical and archeological resources, the preservation of which, either on a national, state, or local basis should receive the thoughtful consideration of the Nation.

The Act of June 1948 is continued in effect by the Act of June 30, 1949. This legislation provides for the conveyance to "any State, political subdivision, instrumentality thereof, or municipality, all of the right, title, and interest of the United States in and to any surplus land . . . for historic monument purposes . . . without monetary consideration," upon determination by the Secretary of the Interior that the property is suitable and desirable for historic monument purposes, and with the approval of the Administrator, General Services Administration. This is provided: "That no property shall be determined . . . to be suitable or desirable for use as a historic monument except in conformity with the recommendations of the Advisory Board on National Parks, Historic Sites, Buildings, and Monuments," created by the Historic Sites Act of 1935.

Under the provisions of this law, such property conveyed to states, counties, or cities must be used and maintained for the purpose conveyed for a period of not less than 20 years or revert to the United States. Applications by local communities for historical surplus property of the Federal Government should be directed to the nearest regional office of the General Services Administration, which refers the application to the National Park Service for investigation and recommendation.

Between 1948 and 1960, a series of important community landmarks has been transferred under this law to states and communities throughout the Nation. The 24 historical surplus Federal properties transferred have included, in addition to Fort Wayne, which guarded the Canadian border, such famous properties as Fort Columbia, guardian of the mouth of the Great Columbia River, in Washington; Fort Popham, a coastal defense, in Maine; Fort Pickens, of Civil War fame, in Florida; a portion of Jefferson Barracks Military Reservation, the old Army quartermaster depot, in St. Louis; Fort Harbor Light Station on Lake Erie in Ohio, a pioneer light on the Great Lakes; Navesink Light Station, in New Jersey, guardian of the entrance to New York Harbor; the Old Customs House site in Yuma, Arizona, part of a pioneer border fort; Fort Warren, Boston Harbor, in Massa-

achusetts, landmark and scene of Alexander Stephen's imprisonment; and Fort Constitution in New Hampshire, site of colonial resistance in 1774 and later coastal defense. More than 15 million dollars would be a modest estimate of their monetary value.

In more recent years the Federal Government has gone beyond the transfer of valuable historical properties to states and cities and has offered financial assistance with certain types of historical or archeological conservation efforts. The latter principle is authorized, for example, in the Federal Aid Highway Act of 1956. This Act, refers to the preservation principles of the Antiquities Act of 1906 and provides specific language in Section 120 for the salvage of archeological remains within the construction zone of state highways built with Federal Aid Highway money and authorizes the use of such Federal funds for this purpose.

The Bureau of Public Roads has issued a policy and procedures memorandum under the Act of 1956 which requests State Highway authorities using Federal Aid money to alert appropriate state or local authorities concerned with historical and archeological preservation when a new road location or road improvement is to be placed in an area where cultural objects may be found.

In practice, the state archeologist, or the representative of the State University's Department of Archeology has made an agreement with the State Highway Department so that surveys may be made in advance, and, if a site or object is located, the State Highway Department may then use Federal Highway money to pay the cost of excavation crews and salvage operations on the proposed new right-of-way. At the present time, a number of states have active programs to use Federal Aid Highway money for this work, including such states as Wisconsin, Illinois, New Mexico, Utah, and South Dakota. The Federal Aid Highway Act is also an example of the continuing influence of the Antiquities Act, a basic Federal conservation measure.

Since 1950, another type of cross-country communication has brought about a direct application of the Antiquities Act of 1906. This is in relation to the laying of oil and gas transmission pipelines which cross the public domain; and by accepted practice, the protective phases of this Act has been applied to private and state lands also crossed by these huge facilities. When the large program of building these transcontinental facilities were initiated in 1950, they began to run into historical and archeological sites

and objects, and it was apparent that some measures should be taken to locate these in advance and to salvage and preserve the materials uncovered. The National Park Service took the initiative in the southwestern states to coordinate this program through the pipeline construction industry association, which now works closely with the Service's Region Three Office in Santa Fe, New Mexico, to arrange for the necessary investigation and salvage work on these right-of-ways.

In practice, the particular pipeline construction company, which anticipates crossing territory where archeological sites may be located, hires a qualified archeologist through the National Park Service to direct the project and the company then furnishes all necessary equipment and pays the salary of the archeologist and the work crews, and the cost of excavation and publication of the report relating to the important materials uncovered. This is a little known activity, but an active application of one of the earlier basic Federal preservation laws, and has resulted in the location, investigation, and publication of a large store of knowledge concerning historical and archeological antiquities which otherwise would have been destroyed completely in the vast program of industrialization now underway in the country.

A very recent application of the Historic Sites Act of 1935 is authorized in the Act of June 27, 1960, which provides for the preservation of historical and archeological data which might otherwise be lost as the result of construction of dams throughout the United States, whether they are Federal, state, or privately constructed dams. Because of the policies set forth in the Historic Sites Act to preserve sites, buildings, objects, and antiquities of national significance, the Act of 1960 requires that, before any agency of the United States shall undertake the construction of a dam, or issue a license to any private individual or corporation for this purpose, it shall give written notice to the Secretary of the Interior setting forth the site of the proposed dam and the approximate area to be flooded. Upon the receipt of such notice, the Secretary of the Interior will have a survey made of the area to be flooded to ascertain whether it contains historical and archeological data which should be preserved in the public interest.

The Secretary is authorized to consult with any interested Federal and state agencies, educational and scientific organizations, and private institutions and qualified individuals to carry out the purposes of the 1960 Act. He may also enter into contracts or make cooperative agreements with the

foregoing and accept and utilize any funds made available for salvage archeological purposes by any private person or corporation holding a license issued by an agency of the United States for dam construction. This opens the way for public-minded corporations and private organizations to provide funds to preserve objects and antiquities which it may be urgent to save in a proposed dam-construction site.

In the present year 1960, we should mention new plans by which the Federal Government would transfer other Federal historical properties to cities and private organizations. Should the plans mature, the Federal Government by act of Congress would be authorized to work directly with cities and non-profit private organizations and to help them secure and preserve certain Federal properties of historical interest involved in urban renewal projects.

We have attempted here to trace the interest and attitude of the Federal Government mainly as expressed in Federal legislative actions with regard to the conservation of our national historical and archeological heritage. First, in the 19th century, we have seen the Federal Government turning to States or local groups for the saving of our great historic sites and resources, and noted then only the beginnings of Federal responsibility in this field. As the 20th century progressed, states and local groups increasingly turned to the Federal Government to preserve historical and archeological properties by Federal legislation and through Federal administration. The three basic Federal historical conservation acts, passed in 1906, 1916, and 1935, strengthened the Federal Government's position and interest in a national policy and program to save our historical and archeological heritage.

In the years since the passage of the Historic Sites Act, especially the last 12 years, the Federal Government has turned more and more to cooperation with state and local groups interested in this work. The Federal Government has given historical property and some limited financial aid for this purpose. Certainly, it is not possible or desirable for the Federal Government to own or administer all historic sites in the United States. Recognition by the Federal Government of the great and continuing contribution which states and local groups are making in historical conservation is not only deserved, but is also a thoughtful and healthy action. The turn to these agencies, now so well equipped for their preservation tasks, is a good omen. It might be said that this turning supports the old adage that "history

repeats itself." However, as John D. Hicks recently said: "History never quite repeats itself," so the applications of present Federal historical conservation legislation and its uncharted course in the future may yet pleasantly surprise us all!