
Historic Leasing and the Unfulfilled Potential to Use Partnerships to Preserve Historic Properties and National Parks

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The concept of the “national park” is an American innovation that has led to the preservation of thousands of historic sites and millions of acres of parkland in the United States and its territories for the enjoyment and education of the American public and future generations. The National Park System manages more than 85 million acres of public lands, national monuments, and historic properties, comprising a network of 419 parks and sites that protect historic, cultural, and natural resources and tell the stories of significant people and events in our nation’s history. The National Park System protects and interprets an estimated two million archaeological sites, 4,200 historic statues and monuments, and more than 27,000 properties that are listed on or eligible for listing on the National Register of Historic Places (NRHP), including 9,600 buildings. For over a century, domestic and international guests have visited properties in the National Park System. In 2018 alone, over 318 million visitors spent an estimated \$20.2 billion in nearby communities, which supported 329,000 jobs and provided a \$40.1 billion boost to the national economy.

With this volume of visitors, aging park facilities are incurring increased wear and tear, which is particularly worrisome in the face of growing deferred maintenance backlogs and static agency budgets. To date, the National Park Service (NPS) has a backlog of nearly \$12 billion in deferred maintenance projects. This backlog is in tension with NPS’s stewardship and preservation responsibilities under the 1966 National Historic Preservation Act (NHPA) and NPS’s own mandate in its 1916 Organic Act to promote the use of national parks in a way that conforms to the park’s purpose: to conserve the historic objects therein to provide for their enjoyment in a way that will leave them “unimpaired for the enjoyment of future generations.”

Removing historically significant properties from the deferred maintenance backlog is reason enough to seek innovative funding and restoration programs. When historic properties are not properly maintained, they often fall into poor repair, making them unavailable for public viewing or interpretation and hindering the historical context that served as the basis for their designation as or inclusion in the national

park. Indeed, Congress has recognized through the NHPA, the historic preservation mandate established in the Organic Act, that preservation for preservation’s sake, independent of the actual use of the designated properties, is a public interest priority and legal obligation. Moreover, it is likely that federal funding, to the extent it becomes available, will be directed at “critical care” properties, and not at properties where deterioration is expected to occur in the future due to the absence of maintenance funds, or for properties now subject to private control or management.

Considering the magnitude of NPS’s ever-increasing burden to preserve the cultural and historic heritage of the country, what tools can NPS use to achieve this purpose? One such mechanism is NPS’s historic leasing program. This program is proving to be a flexible and valuable tool for preserving and maintaining historic buildings and federal structures and bringing underutilized buildings back to public enjoyment and use. Historic leasing encourages private sector engagement and community involvement in historic preservation efforts for historic buildings and other structures in national parks and assists NPS in meeting its historic preservation obligations. This article will provide general background related to NPS management responsibilities and the need to make greater use of the agency’s historic leasing program to creatively address renovations of historic assets, deferred maintenance, and park management projects through involvement of the private sector.

National Park System Management

Created in 1916 under the U.S. Department of the Interior (Interior), NPS is charged with managing the national parks established by Congress and monuments designated by presidential proclamation. 54 U.S.C. §§ 100301–502 (originally enacted as Act of Aug. 25, 1916, 16 U.S.C. §§ 1–4, 39 Stat. 535, i.e., the NPS Organic Act of 1916). Under the NPS Organic Act, the mission of NPS includes conservation of historic objects within national parks, monuments, and reservations for the enjoyment by the public and for future generations. This includes preservation of significant places within American history (e.g., Gettysburg National Military Park, Independence Hall, and the Statue of Liberty) and recreational areas (e.g., Cape Cod National Seashore and Cuyahoga Valley National Park). See Carol Hardy Vincent, Laura A. Hanson, and Carla N. Argueta, Federal Land Ownership: Overview and Data, Congressional Research Service (Mar. 3, 2017) at 6.

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The NHPA includes the requirement to identify, recognize, and preserve historic properties through a collaborative approach and partnership between federal agencies, states, tribes, local governments, and interested parties. 54 U.S.C. § 306101. Notably, Congress enacted the NHPA in response to the NPS's Historic American Buildings Survey, the country's first federal preservation program, which documented 12,000 places in the United States, half of which had either been destroyed or damaged beyond repair by 1966.

National Park System Funding

The NPS budget primarily consists of discretionary congressional appropriations through the annual Interior, Environment, and Related Agencies appropriations bill. NPS also receives certain mandatory appropriations, including recreation fees, concession franchise fees, receipts from leasing, and direct cash donations. However, these mandatory amounts comprised only approximately 19 percent of the total 2019 NPS budget and are not sufficient to address current and backlogged maintenance for historic properties in the National Park System. Over the years, NPS discretionary funding has increased nominally from approximately \$2.7 billion in FY2010 to \$3.2 billion in FY2019, effectively resulting in a decrease of 5 percent when adjusted for inflation. Congressional Research Service, *National Park Service Appropriations: Ten-Year Trends* (July 2, 2019) at 1, 5. NPS spends approximately \$1.1 billion of its general appropriation funding on deferred maintenance each year, which is insufficient to clear the nearly \$12 billion backlog. However, the Repair and Rehabilitation and Cyclic Maintenance accounts have recently seen meaningful increases and, taken together and compared to five years prior, the two accounts would receive approximately \$140 million more in the FY 2020 Interior-Environment appropriations bill (H.R. 3052) passed by the House—a roughly 79 percent increase. Consequently, clearing the existing deferred maintenance backlog requires (1) continued increases in dedicated funding distinct from annual appropriations and (2) a strategy to ensure future funding to adequately maintain historic buildings.

National Park Service Deferred Maintenance Backlog

Over the past decade, the NPS's substantial deferred maintenance backlog has grown at a rate of approximately 10 percent annually (from \$10.83 billion in FY 2010 to \$11.92 billion in FY 2018). This maintenance backlog splits almost evenly between transportation and non-transportation-related infrastructure. Laura B. Comay, *The National Park Service's Maintenance Backlog: Frequently Asked Questions*, Congressional Research Service R44924 (Aug. 23, 2017). This backlog is, among federal agencies, particularly acute for the NPS. While other federal agencies have deferred maintenance (the Bureau of Land Management and the U.S. Fish and Wildlife Service both reported less than \$2 billion and the U.S. Forest Service reported approximately \$5.5 billion), NPS's backlog is the largest.

NPS's backlog has increased because shrinking, or static, budgets have been unable to keep pace with the increasing number of historic properties requiring maintenance. For example, the Civilian Conservation Corps constructed many

assets in the 1930s or in the 1950s and 1960s as part of the NPS's Mission 66 infrastructure initiative. These structures have reached or exceeded their initially anticipated life span and contribute to the expanding backlog list. Other structures also will continue to age and require maintenance.

Congressional Fixes to the Deferred Maintenance Backlog

In response to the growing deferred maintenance backlog, Congress has been in search of potential solutions. As described below, lawmakers from both political parties introduced legislation to address the issue in both 2018 and 2019, but legislation stalled, even with broad political support from both sides of the aisle. Despite Congress's ultimate failure to pass legislation in the most recent session, the House and Senate Appropriations Committees have been making measurable progress.

The Restore Our Parks and Public Lands Act (H.R. 1225) and the Senate companion bill, the Restore Our Parks Act (S. 500), are widely considered the leading proposals for addressing deferred maintenance and the most likely to move forward. The Restore Our Parks and Public Lands Act was first introduced in the 115th Congress and reintroduced on February 14, 2019; this bipartisan legislation has the support of over 300 members of Congress and would establish a federal fund in the U.S. Treasury to address the maintenance backlog at sites managed by NPS and other federal agencies. The Restore Our Parks Act would direct royalties from energy development on federal lands and waters—not already obligated by law to other programs—into a new federal fund, up to \$1.3 billion per year for five years. Eighty percent, or \$360 million, of funds would go to NPS. The Act, however, would prohibit funds from being used for land acquisition, employee bonuses, or to replace discretionary funding for facility operations and maintenance needs.

In addition to proposing appropriation legislation to reduce the backlog, in recent years Congress has paid specific attention to the need for greater use of historic leasing. As early as 2011, in the House Conference Report for the Interior Appropriations bill, Congress strongly encouraged NPS “to pursue the use of cost-effective, innovative solutions like historic leasing.” Similar directives accompanied the appropriations process in 2013 and 2017. However, until a congressional solution is reached, the NPS will need to search for other innovative ways to address the deferred maintenance backlog and future maintenance obligations with its current budget and resources. Greater use of the NPS's authority to lease historic structures is one approach that can help chip away at the maintenance backlog and prevent historic structures from falling into disrepair.

National Park Service Historical Leasing Program

Under the NHPA and the National Parks Omnibus Management Act of 1998, NPS is authorized to lease to private individuals or entities those historic buildings and other structures under its ownership and management that are not needed for current or projected agency purposes. 54 U.S.C. §§ 102102(a), 306121(a). The agency then may retain proceeds from such leases to defray the costs of administration,

maintenance, repair, and related expenses for the historic property. Under these leases, NPS can require the lessee to restore and maintain the property.

NPS authority, criteria, and standards to issue historic leases is quite broad and open-ended and, in most circumstances, can be tailored to the situation and to be consistent with the purposes of the park unit. Before leasing property in a park unit, NPS must determine that the lease (1) will not result in degradation of the purposes and values of the unit; (2) will not deprive the unit of property necessary for appropriate park protection, interpretation, visitor enjoyment, or administration of the unit; (3) contains terms and conditions to ensure lease uses are consistent with the law establishing the unit (*see* 36 C.F.R. §§ 18.11, 18.12); (4) is compatible with NPS programs; (5) provides for rent that is equal to fair market value rent; (6) contemplates activities that are not subject to authorization under a concession contract (*see* 16 U.S.C. § 5966; 36 C.F.R. pt. 51) or commercial use authorization (*see* 36 C.F.R. § 5.3); and (7) ensures preservation of any historic properties covered by the lease. 36 C.F.R. § 18.4. As in other lease contexts, NPS can negotiate these terms to ensure that the historic lease meets park unit purposes. NPS also may find that in some cases, private sector involvement may enhance public activities, roles, and enjoyment of historic sites consistent with park unit purposes.

Historic Leasing as a Private Investment Tool

Although underutilized, historic leasing provides a tool that NPS (and other federal agencies) can use to leverage public-private partnerships and private investment to repair and maintain the approximately 9,600 or more historic buildings under NPS authority. *See* Historic Leasing in the National Park System: Assessing Challenges and Building on Success, Oversight Field Hearing before the H. Comm. of Nat. Res., 115th Cong. (2018). Outside of properties on the deferred maintenance list, NPS can proactively use this tool to prevent properties from falling into disrepair and adding to the current backlog. NPS can further use historic leasing at leasable sites to generate funding, or hands-on maintenance, that could be invested elsewhere for the preservation of historic properties.

As buildings continue to age and become eligible for listing on the NRHP, NPS along with the private sector should continue to explore opportunities to manage and maintain historic resources for the benefit of the public and future generations before maintenance or rehabilitation becomes cost prohibitive or ineffective. In fact, on an initial review of the over 27,000 assets on the List of Classified Structures, an inventory of NRHP historic and prehistoric structures identified and maintained by the NPS, Interior reported 9,000 structures that could be evaluated for reuse through leasing. As of 2018, the NPS leasing program had approximately 160 leases covering 340 structures, which generated total revenues of approximately \$9.3 million in FY2017. Using historic leasing to preserve buildings *and* generate revenue for the National Park System already has a successful track record. For example, under the 2013 Golden Gate National Recreation Area Residential Master Lease, the NPS receives 71.5 percent of the gross revenue, and 20 percent of the revenue is added to a repair and maintenance reserve that is nearly expended annually. Under the Master Lease, the lessee has rehabilitated and leased out 30 housing units for which the NPS has been paid over \$10

million in rent. Accordingly, historic leasing and public-private partnership agreements with nonfederal entities provide an opportunity to preserve and reuse historic buildings that may have been otherwise subject to deterioration, neglect, or loss.

Historic Leasing in Practice

Although the practice is currently underutilized, historic leasing has been used successfully to reinvigorate historic properties by preserving the scenic, aesthetic, and historic character of these structures. These uses can extend beyond sites with a business connection, or that provide public access, to include a wide breadth of other uses, such as residential, agriculture, and educational uses. For example, while some historic buildings continue to be used for their original purpose (e.g., visitor lodges, residential use, or employee housing), other buildings have been adapted to visitor centers or museums. Cuyahoga Valley National Park in Ohio has entered 60-year leases with farmers who pay a monthly rent on restored farmhouses and farm buildings and the underlying land, which currently includes 11 productive farms. Likewise, at First State National Historical Park in Delaware, the park adopted a master lease model, under which it partners with a property management company to lease 11 houses, 2 barns, and 3 pastures. Other buildings on NPS leaseholds have been adapted to visitor centers or museums. At Klondike Gold Rush National Historic Park in Alaska, visitors can tour the Moore House Museum, which was the home of the first family to live in the former gold rush town, and the Mascot Saloon Museum, once the longest-running gold rush era saloon. The section below provides a detailed case study of three of the historic leasing program's greatest success stories.

As of 2018, the NPS leasing program had approximately 160 leases covering 340 structures, which generated total revenues of approximately \$9.3 million in FY2017.

Hot Spring National Park (Arkansas). Hot Springs National Park in Arkansas provides an encouraging example of a historic leasing program that has both proven essential to the vitality of a local community and reduced the deferred maintenance backlog at the park. In the late nineteenth century, developers turned the Hot Springs, Arkansas, area and its 47 geothermal springs into a resort town complete with hotels and bathhouses. First recognized as a unique natural resource deserving of governmental protection in the early 1900s, the Hot Springs area became a unit of the National Park System in 1921. In the 1920s and 1930s, NPS made significant investment in infrastructure at the park. But, by the 1960s, the number of visitors to the area fell. By 1985, all but one of the bathhouses had closed.

NPS began exploring historic leasing opportunities for the park at the turn of the twentieth century. After an initial federal investment of \$18 million in the early 2000s, the bathhouses were ready for tenants. Today, seven of the eight bathhouses are leased, and their uses range from a boutique hotel to a craft brewery. The Quapaw, one of the largest bathhouses, had been vacant since the 1980s, but was reopened in 2008 as a luxury spa after an initial \$2.5 million investment, aided by the historic tax credit and a year of rehabilitation work. Business remains strong a decade later. Under the 55-year lease, NPS is no longer responsible for monthly utility bills or maintenance costs and 2 percent of annual gross revenue must be set aside for maintenance work. Quapaw Bath and Spa handles the daily maintenance operations of the building, but NPS remains an active partner by ensuring that any work conforms with NPS standards. Despite a devastating fire in the city of Hot Springs in February 2014, tourism in Hot Springs National Park has increased by nearly 18 percent since 2013, while investment in the downtown area surrounding the park has grown by \$80 million since the fire.

NPS should utilize all the tools in its toolbox, including historic leasing, to effectively manage and preserve historic structures consistent with the purpose of the Organic Act and NHPA.

Golden Gate National Recreation Area, U.S. Army San Francisco Port of Embarkation (California). Established in 1972, Golden Gate National Recreation Area manages more than 366 historic structures, 5 National Historic Landmark districts, and 13 NRHP properties. Each year, more than 15.6 million people visit the park and spend approximately \$392.1 million in local communities. To ensure preservation of the historic buildings, the park began to enter into formal historic lease agreements in the early 2000s. Now the park has approximately 30 leasing partners who operate everything from a hotel and retreat center and housing to a thriving campus for the arts, located at Lower Fort Mason. Lower Fort Mason was previously known as the Port of Embarkation—a logistical and transport hub built in 1912 and used to support American military operations in the 1920s through World War II—and designated as a National Historic Landmark in 1972. By 1976, however, Lower Fort Mason was in an advanced state of disrepair due to abandonment and vandalism.

Despite the state of disrepair, the Fort Mason Foundation, a private nonprofit organization, entered into a cooperative agreement and a 60-year lease in 2005 with NPS to rehabilitate and manage Lower Fort Mason to become a cultural, recreational, and educational center. The 2005 lease requires

the Fort Mason Foundation to “generate revenues, raise funds, and secure leasehold financing to renovate, preserve, restore, and rehabilitate the Fort Mason Center to facilitate its continued use as a cultural, recreational, and educational center[.]” U.S. DOI NPS, Lease: Fort Mason Center at Golden Gate National Recreation Area, Lease No. GOGA006-10 (Dec. 7, 2005). The Fort Mason Foundation administers the Fort Mason Center for Arts and Culture, which subleases to various small business and nonprofit arts organizations, including art galleries, restaurants and cafes, theaters, a museum, and a dance studio and rents space to the public for events, such as music festivals, conferences, corporate retreats, and birthday parties. Lower Fort Mason now receives 1.4 million annual visitors and program services brought in over \$13 million in revenue in FY2017.

Valley Forge National Historical Park, Philander Chase Knox House (Pennsylvania). Located in southeastern Pennsylvania within Valley Forge National Historical Park, the Philander Chase Knox House—originally known as Maxwell’s Quarters—is another example of a successful historic leasing outcome. Maxwell’s Quarters has a distinguished history extending back to the American Revolutionary War. In 2015, NPS leased the Philander Chase Knox House to Valley Forge Park Events LLC (VFP) for a 10-year period to generate income to preserve this and other sites within Valley Forge National Historical Park and increase access to a house that is generally closed to the public. VFP was also required to complete certain rehabilitation including, painting, furnishing, and ensuring Americans with Disabilities Act access. In addition to lease rents, the park receives a percentage of the revenue from fees and catering sales. VFP currently operates the historic house as an event venue for wedding receptions and social and corporate events.

While the case studies above provide three encouraging success stories on the value of historic leasing, there are still opportunities to utilize this tool more broadly. For example, in September 2013, the National Trust for Historic Preservation (NTHP), the principal nongovernmental proponent of historic preservation in the United States, made historic leasing a key policy goal based on its potential to play a significant role in protecting the national heritage. NTHP issued a report on Historic Leasing in the National Park System—*Preserving History Through Effective Partnerships*—which included case studies on the use, or potential use, of historic leasing in 17 national parks, including Delaware Water Gap National Recreation Area, Harpers Ferry National Historical Park, Valley Forge National Historical Park, Cumberland Island National Seashore, Chesapeake & Ohio Canal National Historical Park, Sandy Hook Unit of Gateway National Recreation Area, Apostle Islands National Lakeshore, Cuyahoga Valley National Park, New River Gorge National River, Glacier National Park, Grand Canyon National Park, and North Cascades National Park. The NTHP expanded on this report in its 2018 testimony before the House of Representatives Natural Resources Committee, wherein the NTHP reaffirmed its support for leasing in these parks and identified additional parks for potential leasing, such as Isle Royale National Park and Martin Luther King Jr. National Historical Park. There is significant opportunity nationwide to identify and evaluate circumstances that justify use of historic leasing to maintain and preserve historic structures—many of which fall within well-known national parks.

Barriers to Leasing: Legal and Public Policy Issues

Despite significant congressional and nongovernmental organization support to pursue innovative, cost-effective solutions to NPS's maintenance backlog, NPS has been slow to fully utilize its leasing authority to preserve historic structures. See FY16, H. Rep. 114-170, H.R. 2822; FY17, H. Rep. 114-632. NPS faces the following barriers to fully implementing the historic leasing program: (1) restrictive statutory, regulatory, and policy interpretations; (2) limited staffing capacity and funding for costs to complete appraisals to prepare and offer buildings for lease; (3) costs for lease administration; and (4) adherence by a few park managers to the "old school" philosophy that NPS should exercise total control over all property within a park and not allow for private sector involvement.

Under the governing statute and the agency's implementing regulations, NPS may only lease historic buildings and associated property if the uses will be consistent with the purposes of the NPS unit where the building is located and compatible with NPS programs. Accordingly, depending on the proposed use, gray areas and disagreements might exist regarding what uses will qualify, and under a purist perspective, exclusion of the public would be inconsistent with the NPS park unit purpose. However, as a counterbalance to this concern, many historic structures are already in a state of disrepair and, with NPS's growing deferred maintenance backlog, are unlikely to obtain maintenance, repairs, or funding to offset or address the dilapidation and ultimate loss of these structures for public use. Moreover, some buildings represent a historic purpose, such as a farm or significant residence, that needs to be protected for that very reason. As a result, NPS should strike an appropriate balance to properly maintain historic structures for the enjoyment of the public, even if full public access every day is not available. Preserving buildings that contribute to a park's scenic and aesthetic values can itself be an important goal.

Further, the current regulatory scheme for historic leasing in the National Park System creates additional hurdles for attracting investors. While current regulations provide for competitive leasing through a Request for Bid or Request for Proposal, or a non-competitive lease to nonprofit organizations at fair market value rental rates, the lease can have a term of no more than 60 years but must "have as short a term as possible, taking into account the financial obligations of the lessee and other factors related to determining an appropriate lease term." 36 C.F.R. § 18.10. While NPS has authority to find that the shortest term necessary to attract private investment is 50 or 60 years, leases with a shorter term of 10 to 20 years are unlikely to be attractive from an economic standpoint for investing, and for eligibility for the federal Historic Tax Credit to help offset rehabilitation costs. Moreover, fair market value

that does not account for the costs of repair and maintenance could be excessive and discourage investment. Notwithstanding these provisions, NPS has found a basis to issue longer term leases in some cases, including a 40-year lease of the Ivy Hollow Farm to the Montessori Children's House of Valley Forge, which as of 2018 had \$1.9 million in revenue. Correspondingly, NPS should consider promoting longer term leases to encourage private investment which could offset NPS long-term maintenance requirements.

Another barrier to NPS's ability to create a self-sustaining lease program is NPS's reluctance to relinquish control of its properties to a private party. Yet, these concerns could be addressed with appropriate lease terms and conditions. Historic leasing does not necessarily require an all-or-nothing result (i.e., turning a public site into a private residence or enterprise), and in some cases, private sector involvement can involve public actors. And at its core, preserving historic properties is in and of itself a public service, regardless of the entity completing, funding, or controlling the work. Indeed, NPS is now encouraging creative thinking and more flexible approaches to managing historic properties. For example, NPS has hired a leasing program manager, and convened a national workshop at the Statue of Liberty on better and effective use of all forms of leasing and partnerships.

Recommendations for Increased Utilization of the NPS Historic Leasing Program

Considering the current state of the growing maintenance backlog, NPS has limited options to preserve historic resources without a congressional solution. NPS therefore should utilize all the tools in its toolbox, including historic leasing, to effectively manage and preserve historic structures consistent with the purpose of the Organic Act and NHPA. Because Congress supports and has granted NPS authority to use historic leasing, Congress and NPS should consider: (1) prioritizing funding for staffing, training, and establishment of a historic leasing task force; (2) creating more explicit agency policy directives and guidance promoting preservation and encouraging the use of historic leasing throughout the park system; (3) identifying NPS units and individual properties that should be high priorities for leasing to facilitate the development of an action plan; (4) creating a formal submission process for nonfederal partners to present leasing opportunities for NPS consideration; and (5) drafting guidance that encourages the use of long-term leases (50 or 60 years). These modest steps would help create momentum to assist NPS in meeting its stewardship responsibilities and to ensure that NPS meets its obligations to preserve historic buildings in the National Park System for the benefit of the current and future generations of visitors. 🌳