



Winter 2016

## From Parks to Partnerships: National Heritage Areas and the Path to Collaborative Participation in the National Park Service's First 100 Years

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### Recommended Citation

Alan W. Barton, *From Parks to Partnerships: National Heritage Areas and the Path to Collaborative Participation in the National Park Service's First 100 Years*, 56 Nat. Resources J. 23 (2016).  
Available at: <https://digitalrepository.unm.edu/nrj/vol56/iss1/5>

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Alan W. Barton\*

## FROM PARKS TO PARTNERSHIPS: NATIONAL HERITAGE AREAS AND THE PATH TO COLLABORATIVE PARTICIPATION IN THE NATIONAL PARK SERVICE'S FIRST 100 YEARS

And what a splendid contemplation too, when one (who has travelled these realms, and can duly appreciate them) imagines them as they *might* in future be seen, (by some great protecting policy of government) preserved in their pristine beauty and wildness, in a *magnificent park*, where the world could see for ages to come, the native Indian in his classic attire, galloping his wild horse, with sinewy bow, and shield and lance, amid the fleeting herds of elks and buffaloes. What a beautiful and thrilling specimen for America to preserve and hold up to the view of her refined citizens and the world, in future ages! *A nation's Park*, containing man and beast, in all the wild and freshness of their nature's beauty!<sup>1</sup>

-George Catlin (1841)

### ABSTRACT

*National parks have been characterized as a democratic institution, a window on natural and cultural history open to all. Over its first century, however, the National Park Service's (NPS) approach to participatory democracy has evolved. In its early years, NPS professionals applied their expertise to make decisions about park policy, administration and management with little input from the public aside from the interests of businesses that operated within the parks. Public participation in the parks was limited to using the facilities that the NPS provided for public enjoyment. Beginning in the 1930s, the NPS expanded public participation by adding management categories that included a greater range of uses, appealing to a wider public. Later, reflecting changing approaches in law, policy and political theory on how to operationalize participation effectively, the NPS increased opportunities for the public to participate in administrative and management decisions. Consulting with the public increased responsiveness to a broad range of public desires*

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1. GEORGE CATLIN, LETTERS AND NOTES ON THE MANNERS, CUSTOMS, AND CONDITION OF THE NORTH AMERICAN INDIANS 261–62 (2d ed. 1842). Catlin, a well-known artist, penned these words after spending much of the 1830s visiting, observing, and painting the Native American nations on the western frontier.

*and helped the NPS develop effective management plans. In the 1980s, the NPS extended public participation even further by collaborating as partners with local communities and organizations in national heritage areas (NHAs). As a partner in NHAs, the role of the NPS moved beyond land manager as the agency took on new responsibilities in community development. Although Congress designates NHAs, they are administered by local entities with the goal of organizing heritage-based education and tourism. NHA management entities partner with the NPS to draw on its expertise in heritage tourism, interpretation and landscape management. NHAs represent a twenty-first century approach to public administration, emphasizing collaboration, partnerships, and sharing costs and responsibilities through federal-local cooperation. They expand the National Park Service's role as guardian not only of American heritage, but also of American democracy.*

## I. INTRODUCTION

As the National Park Service (NPS) celebrates its 100th Anniversary, national heritage areas (NHAs) bring new significance to George Catlin's original vision to use the country's legal system to create "a nation's park."<sup>2</sup> Catlin's 1841 proposal to conserve nature and culture across large landscapes for public enjoyment was not acted upon at the time.<sup>3</sup> However, the national park idea has since taken root in a system with more than 400 units across the United States (U.S.), including national parks, national monuments, national recreation areas, national preserves, national historic sites, and other designated federal lands that Congress has entrusted the NPS to manage.<sup>4</sup> Over the past thirty years, Congress has added 49 NHAs to the NPS's roster.<sup>5</sup> These areas most closely match the vision that Catlin expressed, creating legally protected landscapes that conserve local culture and put it on display for the world to visit and experience. The NHAs coordinate local efforts to conserve natural and cultural heritage and to promote tourism, across large landscapes with multiple ownerships.

Within NHAs, a local management entity partners with the NPS to conserve a region's meaningful stories and to develop heritage tourism. Heritage areas tell a variety of stories. Some focus on natural heritage, such as Arabia Mountain NHA, Atchafalaya NHA, Great Basin National Heritage Route, Kenai Mountains-

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2. See, e.g., RODERICK FRAZIER NASH, *WILDERNESS AND THE AMERICAN MIND* 100–01 (5th ed. 2014).

3. Catlin was, perhaps, well ahead of his time in his proposal, which had no direct influence on the ultimate creation of national parks and the NPS. See RICHARD WEST SELLARS, *PRESERVING NATURE IN THE NATIONAL PARKS: A HISTORY* 293 n.2 (1997); M.I. Jeffrey, *National Parks and Protected Areas—Approaching the Next Millennium*, *ACTA JURIDICA* 163, 164 (1999).

4. NAT'L PARK SERV., *UNITS & RELATED AREAS IN THE NATIONAL PARK SYSTEM*, <http://www.nps.gov/aboutus/news/upload/CLASSLST-409-updated-12-17-2015.pdf> (last visited Dec. 17, 2015) (this list is updated regularly; a link to the current list available at <http://www.nps.gov/aboutus/faqs.htm>).

5. NAT'L PARK SERV., *WHAT ARE NATIONAL HERITAGE AREAS?*, <http://www.nps.gov/heritage/areas/FAQ> (last visited Oct. 30, 2015).

Turnagain Arm NHA, or Sangre de Cristo NHA.<sup>6</sup> Others interpret specific stories of America's industrial past, such as MotorCities NHA, Rivers of Steel NHA, Oil Region NHA, National Coal Heritage Area, and Erie Canalway National Heritage Corridor. Still others emphasize the cultural contributions of a region to the American story, such as Mississippi Delta NHA, Muscle Shoals NHA, or Gullah-Geechee Heritage Corridor. And some focus on moments in American history, such as Crossroads of the American Revolution NHA, Tennessee Civil War NHA, or Shenandoah Valley Battlefields National Historic District.

NHAs deviate from the traditional national park model, in which the NPS owns and manages units under specific guidelines set by Congress. Instead, in NHAs, Congress has assigned to the NPS the role of partner rather than land manager.<sup>7</sup> In this capacity, the NPS collaborates with a local management entity, along with local businesses, non-profits, government agencies and other groups to organize heritage conservation, tourism and sustainable community development.<sup>8</sup> The NPS serves in an advisory capacity, facilitating rather than directing local activities.

### A. Historical Overview

Since the creation of the NPS in 1916, the idea of national parks has evolved, shaped by law, policy, science, management preferences, and public input. Over time the traditional "top-down" management model has given way to greater public participation in park policy and administration. Beginning with Yellowstone National Park, Congress delegated the first national parks and some of the first national monuments to the Secretary of the Interior, although they were managed by the military with little policy direction.<sup>9</sup> Shortly after its establishment, the NPS managed the parks using a "command-and-control" administrative approach that relied heavily on the will and the skill of the administrators to manage the national parks and monuments. Over time, the NPS expanded its scope of responsibilities to include new designations and a broader range of resources to manage. In addition, notions of democratic governance changed, giving greater priority to a public voice in administrative decisions. The NPS gradually adopted a more participatory administrative approach, finding ways to consult with members of the public and take their opinions into account in management decisions.

In the late 20th century, theories of governance continued to evolve, emphasizing pluralism and collaborative administration. At the same time, ecologists were recognizing the need to manage large landscapes rather than fragmented parcels of land, which would require collaborative action across ownership boundaries.<sup>10</sup>

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6. NAT'L PARK SERV., NATIONAL HERITAGE AREAS, <http://www.nps.gov/heritageareas/> (last visited Oct. 30, 2015) (information on each of the NHAs named in this paragraph and on all other NHAs can be found by using the dropdown menu on the NPS's NHAs webpage).

7. CAROL HARDY VINCENT & LAURA B. COMAY, HERITAGE AREAS: BACKGROUND, PROPOSALS, AND CURRENT ISSUES 4 (2013).

8. All. of Nat'l Heritage Areas, *Our Mission*, <http://www.nationalheritageareas.us/about.html> (last visited Sep. 27, 2015).

9. ALFRED RUNTE, NATIONAL PARKS: THE AMERICAN EXPERIENCE 98 (4th ed. 2010); *see also* SELLARS, *supra* note 3, at 19.

10. *See, e.g.*, LARRY D. HARRIS, THE FRAGMENTED FOREST: ISLAND BIOGEOGRAPHY THEORY AND THE PRESERVATION OF BIOTIC DIVERSITY (1984); Robert L. Glicksman & Graeme S. Cumming,

The NPS took up this challenge. Today, the NPS manages large landscapes in the 49 NHAs, which exemplify a collaborative and “bottom up” administrative approach.<sup>11</sup>

Currently, critics are calling for a renewal in park management and a revamping of the NPS.<sup>12</sup> Moreover, the NPS is perpetually underfunded and managers must show creativity to stretch their budgets to cover all of the management obligations.<sup>13</sup> To look forward, however, it might be valuable to look back and draw inspiration from Catlin. NHAs represent a broad approach to conservation that puts Catlin’s vision into practice. By partnering with local entities, NHAs share costs and spread conservation dollars further.<sup>14</sup> In NHAs, the public engages in conserving not just remote park landscapes, but the very landscapes in which they live. NHAs achieve this by applying a collaborative approach to managing large and diverse landscapes. This innovative model corresponds to evolving thinking in administrative practice and offers new opportunities for participation in the twenty-first century.

In this article, I review the history of public participation in the national parks, and show how public engagement has evolved from deriving benefits from parks, to consulting on management decisions, to collaborating as partners in heritage conservation. In Part II, I develop the concept of participation in political and administrative contexts, setting the stage for a review of changing administrative approaches through the NPS’s first century. In Part III, I apply variations on the idea of participation to explain how the NPS has managed parks and other units through its first 100 years. Then, in Part IV, I focus on a relatively new designation, the national heritage area, as a model the NPS can apply to structure administrative participation in the twenty-first century. And in Part V, I examine some issues currently facing NHAs that may present future challenges to NHA managers.

## II. PUBLIC PARTICIPATION AND THE PLURALIST IDEAL

To appreciate what is unique about NHAs from an administrative perspective, it is helpful to recognize how the concept of participation has evolved in both administration and in protected areas management. Participation is a concept that is central in democratic forms of governance. In practice, however, participation

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*Landscape Level Management of Parks, Refuges and Preserves for Ecosystem Resilience*, in SOCIAL-ECOLOGICAL RESILIENCE AND LAW 63 (Ahjond S. Garmestani & Craig R. Allen eds., 2014); Tony Hiss, *One Backyard: The First National Workshop on Large Landscape Conservation*, LAND LINES, Winter 2015, at 24.

11. VINCENT & COMAY, *supra* note 7, at 1, 3–4.

12. See, e.g., BEYOND NATURALNESS: RETHINKING PARK AND WILDERNESS STEWARDSHIP IN AN ERA OF RAPID CHANGE (David N. Cole & Laurie Yung eds., 2010); Ethan Carr, *NPS Design Tradition in the 21st Century*, 30 GEORGE WRIGHT F. 5, 7 (2013); John D. Leshy, *Federal Lands in the Twenty-First Century*, 50 NAT. RESOURCES J. 111 (2010); NATIONAL PARKS AND RURAL DEVELOPMENT: PRACTICE AND POLICY IN THE UNITED STATES 268–78 (Gary E. Machlis & Donald R. Field eds., 2000); NAT’L PARK SERV., RETHINKING NATIONAL PARKS FOR THE 21ST CENTURY, <http://www.nps.gov/policy/report.htm> (last visited Oct. 3, 2015); NAT. PARK SERV., KEEPING NATIONAL PARKS RELEVANT IN THE 21ST CENTURY (2005), available at <http://www.nps.gov/orgs/1412/upload/Keeping-Parks-Relevant-in-the-21st-Century.pdf>.

13. Jeffrey, *supra* note 3, at 163–64.

14. VINCENT & COMAY, *supra* note 7, at 3–4.

can vary in different contexts. Over the NPS's first century, participation in national park administration has evolved both as a concept and in practice.

### A. The Concept of Participation

What is participation? In political and administrative contexts, participation is about how people interact with each other in order to make decisions that have a public effect. Participation is a complex concept, yet one that is crucial in democratic political systems.<sup>15</sup> While it is tempting to reduce participation to an individual choice, the concept necessarily implies action within a social context.<sup>16</sup> In particular, a participatory political culture typically grows out of social and economic development. As development advances, participation generally increases both as a feature of political structure and in practice as citizens demand greater engagement with their governing authorities.<sup>17</sup> Authoritarian politics are generally hostile to participation, while participation thrives in more pluralist settings.<sup>18</sup> Moreover, in collective endeavors, participatory action encompasses engagement in a variety of activities, including information gathering, consultation, decision-making, implementation, benefits, and evaluation.<sup>19</sup>

Here, I consider participation as a nested hierarchy, which advances with greater openness in political regimes and more complexity in social development (See *Figure 1*). The lower part of the hierarchy refers to closed political contexts, in which participation is limited to enjoying the benefits of an administrative program. Participants generally have little voice in how the program is structured or delivered. As politics become more democratic, the meaning of participation grows. Participants have a greater say in policy and administrative decision-making. Moreover, the nature of administration changes as administrators must account for public input. At the top of the hierarchy, in advanced democratic contexts, participants partner with others to collaborate in the conceptualization and implementation of administrative programs.

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15. Gro Bjerknes & Tone Bratteteig, *User Participation and Democracy: a Discussion of Scandinavian Research on System Development*, 7 SCANDINAVIAN J. OF INFO. SYS., no.1, 1995, 73, 74. See also GERAINT PARRY, GEORGE MOYSER, & NEIL DAY, POLITICAL PARTICIPATION AND DEMOCRACY IN BRITAIN 3–22 (1992).

16. John M. Cohen & Norman T. Uphoff, *Participation's Place in Rural Development: Seeking Clarity Through Specificity*, 8 WORLD DEV. 213, 214 (1980).

17. *Id.* at 216.

18. Robert B. Charlick, *Popular Participation and Local Government Reform*, 21 PUB. ADMIN. & DEV. 149 (2001).

19. Cohen & Uphoff, *supra* note 16, at 219; MICHAEL WELLS & KATRINA BRANDON WITH LEE HANNAH, PEOPLE AND PARKS: LINKING PROTECTED AREA MANAGEMENT WITH LOCAL COMMUNITIES 43 (1992) [hereinafter WELLS & BRANDON].



Figure 1: A Nested Hierarchy Model of Participation in National Park Service Areas

At its most basic, participation means sharing in the *benefits* of an administrative program or a similar collective endeavor.<sup>20</sup> In the national parks context, visitors to park areas enjoy a variety of opportunities to participate in outdoor recreation activities,<sup>21</sup> guided by the facilities and rules that Congress and the NPS establish. In the large wilderness parks, visitors enjoy non-consumptive activities, such as viewing wildlife, hiking, camping, and participating in educational interpretive programs. In other sites, visitors engage in a wider range of non-consumptive and consumptive activities, such as water sports, boating, fishing, and hunting. Experiencing the benefits of activities in institutional settings such as parks constitutes a straightforward and elementary form of participation.

Those engaging in benefits-oriented participation generally rely on politicians and administrators to make decisions. The participants themselves do not have a say in the decisions that shape their opportunities to enjoy parks. The authority to make decisions for others generally derives from expertise or specialized knowledge that decision-makers possess. Relying on experts to make decisions may have technical benefits, but it comes at a political cost. Shutting out constituents and stakeholders from decision-making processes that will affect them sacrifices an opportunity to create buy-in in the decision-making agent or agency. Buy-in is enhanced when decision-makers and participants develop a meaningful relationship that shares decision-making authority. This creates the potential to build greater legitimacy in the agency and capacity in the participant.<sup>22</sup> When participation is

20. Cohen & Uphoff, *supra* note 16, at 221.

21. NAT'L PARK SERV., MGMT. POLICIES § 8.2.2 (2006).

22. Dale Krane, *Democracy, Public Administrators, and Public Policy*, in DEMOCRACY AND PUBLIC ADMINISTRATION 24, 37 (Richard C. Box ed., 2007).

limited to receiving benefits, the opportunity to create a meaningful relationship between the decision-maker and the participant is squandered.

Moving beyond benefits, *consultative* participation addresses how authority holders and the subjects of that authority interact in a decision-making process. Social and economic advancement implies a better educated public, rising incomes, and greater individual autonomy. In this context, the public likely will demand a larger role in administrative decision-making.<sup>23</sup> In the U.S., since the mid-twentieth century administrators have been generally required to solicit public comments in decision-making processes.<sup>24</sup> In theory, public comments provide administrators with a broader vision of the circumstances surrounding their decisions, and this helps them make more intelligent and inclusive decisions. Moreover, when administrators consult the public as a part of the decision-making process, the form and nature of relationships between those in authority and those who are governed by that authority change. The legitimacy of the authority—that is, the extent to which subjects of authority perceive an interest in conceding decision-making power to the authority<sup>25</sup>—generally grows when participants have a say in shaping decision-making. Consultative participation increases voluntary buy-in to the institutions of government by ensuring participants have a voice in decisions that affect them and a hand in shaping those institutions.<sup>26</sup>

More and more, administrative agencies are moving beyond consulting constituents, and advancing to a more integrative and *collaborative* form of participation. Under this approach, government agencies devolve or share decision-making authority with other entities, including private actors such as businesses, non-profits, and individuals, as well as state, county and local governmental bodies. The role of an administrative agency shifts from decision-maker to facilitator. Rather than making and enforcing the rules, a facilitator collaborates with all who have a stake in the outcome of an activity. The facilitator's job is to ensure that the process runs smoothly and fairly. In practice, administrative agencies retain their primary functions of rule-making and adjudication even when they operate as facilitators, but the rules they make rely less on command-and-control, and more on establishing fair procedures that coordinate the activities of interested parties. Rather than picking winners and losers among contentious combatants, a collaborative adjudication process could address disputes among the participating entities with an eye towards finding equitable solutions that share responsibility among parties and move them towards a more positive future.

The nested hierarchy formed by benefits, consultative and collaborative participation suggests a scale from less participatory to highly participatory processes. Positions along the scale are determined by the extent to which authority to make decisions is shared among the stakeholders with an interest in the decision.

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23. JANET VINZANT DENHARDT & ROBERT B. DENHARDT, *THE NEW PUBLIC SERVICE: SERVING, NOT STEERING* 140 (Expanded ed. 2007).

24. This is a federal statutory requirement of the Administrative Procedures Act of 1946, Pub. L. No. 79-104, 60 Stat. 237 (codified as amended at 5 U.S.C. §§ 551–559).

25. MAX WEBER, *ECONOMY AND SOCIETY: AN OUTLINE OF INTERPRETIVE SOCIOLOGY* 31–38 (Guenther Roth & Claus Wittich, eds., Ephraim Fischhoff et al., trans., Univ. of Cal. Press, 1978).

26. Carolina Johnson, *Local Civic Participation and Democratic Legitimacy: Evidence from England and Wales*, 63 *POL. STUD.* 765, 769–70 (2015).



At one extreme those in authority make decisions that they impose on others, based on their own expertise, in a less participatory fashion. In the middle of the scale, authorities consult with participants seeking input that assists in making decisions, and engaging the public in implementing the decision. At the other end of the scale, administrators share or devolve authority to make decisions over to subjects, and facilitate the process through which decisions are made.

## B. Participation and Pluralism

Participation is part of a shift in how liberal democracy is enacted in modern states. Traditionally, pluralist government was the authority that directed or coordinated the activities of various interest groups, through laws, regulations and litigation. However, traditional forms of government are changing, and new institutions are emerging that engage civil society and businesses directly in the policy-making process in what has been called the “shift from government to governance.”<sup>27</sup> This shift emphasizes the importance of engaging stakeholders not just in making decisions, but also in framing those decisions. In other words, those with a stake in the outcomes of decisions should be directly involved in constructing the decision-making process. This means identifying issues, considering how diverse perspectives and interests will be characterized through the process, and determining where the boundaries in the process exist—which aspects of the issues should be included in discussions and which should be excluded, for example.

In today’s turbulent and interdependent society, creative solutions are necessary, requiring flexibility in all organizations.<sup>28</sup> Command-and-control politics do not function well under these conditions, and leaders today carry different responsibilities than in the past.<sup>29</sup> Leaders are not expected to be the sole decision-makers, nor do they autonomously establish a vision for the group and inspire or coerce others to carry it out.<sup>30</sup> Instead, leadership must be responsive to people’s needs. Today, people want a say in decisions that affect them.<sup>31</sup> Therefore, more leaders must serve as brokers and facilitators who draw together ideas from diverse groups.<sup>32</sup> Under this approach, leadership is a process, not a position in a hierarchy.<sup>33</sup>

Two authors have captured this new pluralist approach in ways that apply directly to how Congress has structured NHAs, and how the NPS has managed these areas. In what he calls “the new public service,”<sup>34</sup> Paul Light describes changes in the organization of work and in the tastes and desires of workers, which have reshaped government’s mission and operations.<sup>35</sup> Today, government must compete against business and the non-profit sector for talented workers, who no longer expect

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27. Marc Parés, *River Basin Management Planning with Participation in Europe: From Contested Hydro-politics to Governance-Beyond-the-State*, 19 EUR. PLAN. STUD. 457, 459–60 (2011).

28. DENHARDT & DENHARDT, *supra* note 23, at 140.

29. *Id.*

30. *Id.*

31. *Id.*

32. *Id.*

33. *Id.*

34. PAUL C. LIGHT, *THE NEW PUBLIC SERVICE* 6 (1999).

35. *Id.* at 1.

or desire a 30-year-long, secure career. Instead, workers seek jobs that offer challenges and rewards, and are willing to work in any environment that provides these. In essence, public service is no longer synonymous with government work; instead, public service can be enacted in various settings, including in business or non-profit organizations. Applying this to the park context, managing heritage resources is not the sole province of the NPS or the federal government, but a shared enterprise between public and private actors, the approach Congress has taken with NHAs.

Robert J. Mason notes that the command-and-control approach has been used in laws designed to reduce pollution, but land use laws have always been more flexible.<sup>36</sup> He describes what he calls the “quieter revolution” in land use management,<sup>37</sup> an approach that is rooted in locality and forged by partnerships with stakeholders that value and respect participants.<sup>38</sup> He describes the “tempered” roles that government plays in the new land-management regime:

One of those roles is provider of funds, technical resources, incentives, and disincentives. Another role, in which agencies are more directly engaged, is as equal partners with—or perhaps even lesser players than—nonprofit organizations, private landowners, and local governments. Governments are collaborators and partners, acting more as facilitators than commanders-in-chief.<sup>39</sup>

Mason’s description nicely depicts how Congress has framed the role of the NPS in NHAs.

### C. The Future of the National Park Service

The NPS at its centennial can claim to be one of the most beloved of the federal administrative agencies. The NPS ranger, wearing a campaign hat and telling a good story, inspires admiration from the public.<sup>40</sup> The brown arrowhead that symbolizes the NPS carries tremendous value as a brand.<sup>41</sup> Over its first century, the NPS has built up a store of goodwill and positive administrative capital that many federal agencies would envy. How will the NPS spend this capital in its second century? As America continues to grow both demographically and economically into an increasingly diverse nation, empowering more of its residents with education and

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36. ROBERT J. MASON, *COLLABORATIVE LAND USE MANAGEMENT: THE QUIETER REVOLUTION IN PLACE-BASED PLANNING* 2 (2008).

37. Mason builds on a term that emerged in the early 1970s, the “quiet revolution” in land use controls, referring to a set of state and regional laws that regulated property rights and local efforts at zoning and environmental protection. *See, e.g.*, FRED BOSSELMAN & DAVID CALLIES, *THE QUIET REVOLUTION IN LAND USE CONTROL* 3 (1971); Charles C. Geisler, *The Quiet Revolution in Land Use Control Revisited*, in *THE RURAL SOCIOLOGY OF ADVANCED SOCIETIES: CRITICAL PERSPECTIVES* 489, 489–90 (Frederick H. Buttel & Howard Newby eds., 1980).

38. MASON, *supra* note 36, at 3.

39. *Id.* at 2.

40. HORACE M. ALBRIGHT & FRANK J. TAYLOR, “OH, RANGER!” *A BOOK ABOUT THE NATIONAL PARKS* 5 (2d ed. 1929).

41. The value of the NPS brand is not lost on national heritage area managers, and this is one of the clear benefits that managers see in maintaining a partnership with the NPS.

individual rights, the NPS must, like other federal agencies, evaluate and reframe its position and tactics within the makeup of the nation.

While there will always be room for national parks, monuments, preserves and other land-based units within the NPS, NHAs offer a means for the NPS to expend some of its administrative capital over its second century. NHAs expand the NPS's impact beyond park boundaries to conserve landscapes and culture in ways that empower communities, enhance the agency's legitimacy, and build capacity in heritage conservation. Units owned and managed by the NPS may be embedded within NHAs, along with other federal, state and local lands, businesses and private properties. The NHA offers the NPS an opportunity to collaborate across boundaries with many other entities to build greater knowledge about, appreciation for, and active involvement in the region's heritage.

### III. PARTICIPATION AND THE NATIONAL PARK SERVICE

Through its first century, the NPS's approaches to public participation have evolved from a benefits-oriented approach, with NPS experts making crucial management decisions that shaped opportunities for users; to a consultative approach, which engages members of the public to garner ideas about how to effectively manage parks; to a partnership-based, collaborative approach, in which the NPS acts not as manager but as a partner with community organizations. In applying these forms of participation to the NPS, the focus is on participation in administration and implementation. While administrative agencies are not immune from politics, and generally take their marching orders from the laws that Congress passes, agencies can implement those laws using various strategies to interact with the public. NPS administrators have adapted their approach to participation in managing NPS units as their assessments of the efficacy of participation have changed, and as they have integrated new directives from Congress into their operations.

#### A. Benefits-Oriented Participation and the NPS

In the days prior to the NPS, public participation in managing the national parks was primarily limited to the benefits of visitation. Military park managers carried out protection without an agency or organic legislation to guide them, and little public input.<sup>42</sup> The concept of "public lands" was new, and many of the details regarding the rights of citizens on the lands were not yet worked out or even questioned.<sup>43</sup> Congress did respond to public opinion in designating parks. For example, the Yosemite Land Grant was created in 1864 in response to public pressure from Californians,<sup>44</sup> and a series of newspaper articles contributed to the designation of Yellowstone National Park in 1872.<sup>45</sup> But participation in the park management and administration was hampered by the lack of agency guidance and

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42. RUNTE, *supra* note 9, at 98; SELLARS, *supra* note 3, at 19.

43. RONALD A. FORESTA, AMERICA'S NATIONAL PARKS AND THEIR KEEPERS 14 (1984).

44. RUNTE, *supra* note 9, at 28.

45. SELLARS, *supra* note 3, at 19.

cohesive administrative rules and regulations, as well as a public unaccustomed to participating directly in governmental decisions.<sup>46</sup>

Tourism, one form of benefits-type participation, was a goal of the parks from the very beginning.<sup>47</sup> According to its enabling legislation, Yellowstone National Park was “set apart as a public park or pleasuring-ground for the benefit and enjoyment of the people,”<sup>48</sup> and the act directs the Secretary of the Interior to establish facilities for tourism at the park.<sup>49</sup> The emphasis on tourism exemplifies the benefits-oriented approach to park management by focusing the park’s mission on activities that the public could enjoy.<sup>50</sup> Management decisions were made with little public input, however. The command-and-control administrative style that accompanies the benefits-oriented approach to tourism is evident in the Yellowstone Enabling Legislation, which states:

[The] public park shall be under the exclusive control of the Secretary of the Interior, whose duty it shall be, as soon as practicable, to make and publish such rules and regulations as he may deem necessary or proper for the care and management of the same.<sup>51</sup>

The act’s focus on preservation is another public benefit: in addition to creating an infrastructure for tourism, it directs the Secretary to manage the park for “the preservation, from injury or spoliation, of all timber, mineral deposits, natural curiosities, or wonders within said park, and their retention in their natural condition.”<sup>52</sup>

The Yellowstone Act also states that anyone who settles within the park boundaries would be removed.<sup>53</sup> The provisions authorizing managers to remove settlers and granting the Secretary of the Interior “exclusive control” (language that is repeated in enabling legislation for many parks) illustrate the coercive nature of park management under the benefits approach used during the years prior to the creation of the NPS. Though tourists could visit the parks, there was a wide gap between people and the parks, not only geographically, but politically and administratively as well.<sup>54</sup> People with an interest in parks might have a say in their disposition through their congressional representatives or the media, but beyond that, there were few ways for people to interact with the parks other than as tourists. On the ground, parks were managed by the military, and soldiers were there to enforce rules. They were not in a position to respond to any expressed concerns about the nature and purpose of the rules themselves.<sup>55</sup>

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46. ROBERT STERLING YARD, *THE BOOK OF THE NATIONAL PARKS* 23–24 (1919).

47. SELLARS, *supra* note 3, at 10–11.

48. An Act to set apart a certain Tract of Land lying near the Head-waters of the Yellowstone River as a public Park, Pub. Law No. 42-24, 17 Stat. 32 (1872) (codified as amended at 16 U.S.C. § 21).

49. 17 Stat. at 32–33.

50. YARD, *supra* note 46, at 22.

51. 17 Stat. at 32–33.

52. 17 Stat. at 32.

53. *Id.*

54. YARD, *supra* note 46, at 23–24.

55. SELLARS, *supra* note 3, at 48.

At its creation in 1916, the NPS inherited 15 existing parks,<sup>56</sup> most badly in need of strong resource management.<sup>57</sup> Several national monuments, described in more detail below, also fell under NPS control.<sup>58</sup> The fledgling agency focused on establishing funding streams from Congress, creating positions to carry out necessary functions, and inventorying existing parks.<sup>59</sup> Those who worked diligently to create the NPS over several years leading up to 1916 were best positioned to run the agency.<sup>60</sup> Many had business backgrounds, including Stephen Mather, the first director of the NPS.<sup>61</sup> To the extent that the agency interacted with the public in roles other than tourists, they dealt primarily with business entities, to build a tourism industry that would create a strong constituency that would sustain the agency.<sup>62</sup>

In its early days, the NPS continued the command-and-control administrative style that had characterized management under the military.<sup>63</sup> The public was not invited to participate in management decisions, and participation was limited to the benefits the agency provided in the parks. The NPS built a culture around agency expertise.<sup>64</sup> In managing the parks, the NPS relied on “top-down approaches” such as state-driven land use planning, technical expertise such as landscape architecture and engineering, and controls imposed by managers on public uses.<sup>65</sup> For example, the 1918 “Lane Letter” from Secretary of the Interior Franklin K. Lane, argued that parks should be managed for posterity.<sup>66</sup> The letter emphasized three management principles: first, that national parks would remain unimpaired for future generations; second, that they are for use and pleasure of the people; and third, that decisions about the parks would be driven by the public interest.<sup>67</sup> In practice,

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56. Parks that followed Yellowstone included Mackinac Island in 1875 (later ceded to the State of Michigan), Yosemite, Sequoia and General Grant in 1890 (Yosemite National Park surrounded the land ceded to the State of California in 1864; in 1906 California returned the original grant to the federal government, and it was added to the national park), Mount Rainier in 1899, Crater Lake in 1902, Wind Cave in 1903, Sully’s Hill in 1904 (later converted to a game preserve), Platt and Mesa Verde in 1906 (Platt was later converted to Chickasaw National Recreation Area), Glacier in 1910, Rocky Mountain in 1915, and Hawaii and Lassen Volcanic in 1916 (Hawaii National Park was later split into Hawaii Volcanoes and Haleakala National Parks). In addition, a number of national monuments had been created, many of which were assigned to the NPS to manage as well. *See* FORESTA, *supra* note 43, at 12, and SELLARS, *supra* note 3, at 11–12. Yard reported that Casa Grande Ruin in Arizona was initially designated as a national park in 1889, preserving less than one square mile, although this designation is not noted in other lists of pre-NPS parks. Casa Grande was later reclassified as a national monument. *See* YARD, *supra* note 46, at 24–25.

57. SELLARS, *supra* note 3, at 48.

58. *See* RUNTE, *supra* note 9, at 103.

59. HORACE M. ALBRIGHT, RUSSELL E. DICKENSON & WILLIAM PENN MOTT, JR., NATIONAL PARK SERVICE: THE STORY BEHIND THE SCENERY 12–17 (1978); *See also*, SELLARS, *supra* note 3, at 48–50, 59; FORESTA, *supra* note 43, at 19.

60. FORESTA, *supra* note 43, at 48–49.

61. HORACE M. ALBRIGHT, THE BIRTH OF THE NATIONAL PARK SERVICE: THE FOUNDING YEARS, 1913–33 16 (1985).

62. SELLARS, *supra* note 3, at 32.

63. *Id.* at 48.

64. *Id.*

65. *Id.* at 49.

66. Carr, *supra* note 12, at 7. The Lane Letter carried significant influence on agency policy in the early years of the NPS.

67. ALBRIGHT, *supra* note 61, at 69.

the latter concern probably meant the public interest as NPS administrators saw it. According to the Lane Letter, the three principles were to be done by harmonizing infrastructure to the landscape:

All improvements will be carried out in accordance with a preconceived plan developed with special reference to the preservation of the landscape, and comprehensive plans for future development of the national parks on an adequate scale will be prepared as funds are available for the purpose.<sup>68</sup>

The Lane Letter is exemplary of the benefits-oriented administrative approach. The purpose of the NPS was to improve public access,<sup>69</sup> but not public participation in planning access. Improving access and facilities was the province of the NPS's trained experts and "in-house professionals."<sup>70</sup>

The Lane Letter did not ignore public input entirely. While it suggested that preserving the parks for posterity was the first mission of the NPS, the letter also endorsed good relations with concessioners, and collaboration with local chambers of commerce and auto clubs to promote the parks.<sup>71</sup> In short, the letter suggested close ties between parks and the business community, which constitutes an important sector of the public, but not necessarily one that is widely representative of all park users or interests. The section below entitled "Participation or Outsourcing?" elaborates on the role that business plays in participatory policy and administration.

Beginning in the 1930s, additional opportunities for public participation emerged as Congress created new designation categories for public lands. The NPS took on broader management responsibilities beyond the large nature-oriented national parks and smaller national monuments. The new designation categories generally increased the NPS's responsibilities into cultural heritage preservation and outdoor recreation, expanding the constituency to visit the new units and to participate in the parks' benefits. While the large wilderness parks developed restrictions on uses in line with a preservationist philosophy, the new designation categories generally broadened the types of uses that were acceptable.

Expanded designation categories are significant from the perspective of benefits-oriented participation, as they open up access to a wider range of uses and therefore attract a wider range of users to the national park units. Some new designation categories expanded recreational opportunities for benefits participation. Designations that included protection of natural resources, but with fewer restrictions than national parks, included national recreation areas, national seashores and lakeshores, and national preserves. Beginning in 1935, the NPS and other agencies began managing areas they called "national recreation areas," although initially the

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68. Letter from Franklin Knight Lane, Secretary of the Interior to Stephen T. Mather, Director of the National Park Service (May 13, 1918), in *AMERICA'S NATIONAL PARK SYSTEM: THE CRITICAL DOCUMENTS* 49 (Lary M. Dilsaver ed., 1994).

69. ROBERT B. KEITER, *TO CONSERVE UNIMPAIRED: THE EVOLUTION OF THE NATIONAL PARK IDEA* 3 (2013).

70. Carr, *supra* note 12, at 7.

71. Robert B. Keiter, *Revisiting the Organic Act: Can It Meet the Next Century's Conservation Challenges?*, 28 *GEORGE WRIGHT F.* 240, 241–42 (2011).

designation was informal and created through an interagency agreement.<sup>72</sup> The purpose of national recreation areas, as specified in the 1964 enabling legislation for Lake Mead,<sup>73</sup> is “for general purposes of public recreation, benefit, and use, and in a manner that will preserve, develop, and enhance, so far as practicable, the recreation potential, and in a manner that will preserve the scenic, historic, scientific, and other important features of the area.” By specifically authorizing bathing, boating, camping, picnicking, grazing, mineral leasing, vacation cabins, hunting, fishing, and trapping in national recreation areas, the statute expanded uses above and beyond what is allowed in a national park.<sup>74</sup>

In addition to national recreation areas, Congress created the designation of national seashores in the 1930s, and later added a similar designation of national lakeshores.<sup>75</sup> These designations solidified the NPS’s role as a provider of outdoor recreation, and increased opportunities for benefits participation. National seashores are areas designated to protect coastlines and to provide recreational opportunities. The first national seashore was designated at Cape Hatteras in 1937.<sup>76</sup> National lakeshores follow similar guidelines to national seashores, but are located around the Great Lakes. The first national lakeshore was created at Pictured Rocks in 1966.<sup>77</sup> Both designations emphasized conservation of natural qualities as a backdrop for recreationists. In the 1970s, Congress added another designation category, the national preserves. These areas typically allow consumptive uses that are prohibited in national parks, such as hunting and use of off-road vehicles, as well as commercial activities such as mining and oil and gas development.<sup>78</sup> In some instances, national preserves serve as de facto “buffer zones” for parks, for example, Big Cypress National Preserve protects a portion of the watershed north of the Everglades National Park.

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72. SELLARS, *supra* note 3, at 138–140.

73. Lake Mead was the first legislatively designated national recreation area, created by Congress on October 8, 1964. Lake Mead National Recreation Area, Pub. L. No. 88-639, 78 Stat. 1039 (1964) (codified as amended at 16 U.S.C. § 460(n)).

74. The NPS manages 19 national recreation areas. The “national recreation area” designation is also used for lands managed by the Bureau of Land Management and the U.S.D.A. Forest Service.

75. Harlan D. Unrau & G. Frank Willis, *Initiation of Four New Types of Recreation Areas in National Park System*, in ADMINISTRATIVE HISTORY: EXPANSION OF THE NATIONAL PARK SERVICE IN THE 1930S ch. 4H (1983), [http://www.nps.gov/parkhistory/online\\_books/unrau-williss/adhi4h.htm](http://www.nps.gov/parkhistory/online_books/unrau-williss/adhi4h.htm).

76. The 1937 enabling legislation for Cape Hatteras emphasized maintaining the wilderness character of the seashore, except in areas where recreational use was allowed. Popular recreational uses include beachcombing, swimming, fishing, hiking, camping, and learning about the culture of the area. Cape Hatteras National Seashore Enabling Legislation, Pub. L. No. 75-687, 50 Stat. 670 (1937) (codified as amended at 16 USC § 459).

77. Pictured Rocks National Lakeshore, Pub. L. 89-668, 80 Stat. 922 (1966) (codified as amended at 16 U.S.C. § 460(s)).

78. There currently are 19 units designated as national preserves in the National Park System. The first national preserves were designated in 1974 at Big Thicket, Texas and at Big Cypress, Florida. Enabling Legislation for Big Thicket National Preserve, Pub. L. No. 93-439, 88 Stat. 1254 (1974) (codified as amended at 16 U.S.C. § 698), An Act to Establish Big Cypress National Preserve, Pub. L. No. 93-440, 88 Stat. 1258 (1974) (codified as amended at 16 U.S.C. § 698(f)). The national preserve designation was used extensively in the Alaska National Interest Lands Conservation Act (ANILCA) of 1980, Pub. L. No. 96-487, 94 Stat. 2371 (1980) (codified as amended at 16 U.S.C. §§ 3101–3233 and elsewhere), due to the importance of subsistence use of lands among Native Alaskans.

Areas designated as national wild and scenic rivers, national trails and national parkways all generally permit more expansive public uses than the traditional national park and national monument designations.<sup>79</sup> These are “overlay” designations, however, that can cross NPS land, as well as other public lands or private land.

The NPS has also taken on more cultural preservation, in designations such as national historical park, national historic site, national memorial, national battlefield, and national cemetery. These new designations show that while the NPS has evolved in its approach to participation, there also has been a tendency to keep some focus on benefits-oriented participation and control of decisions and management within the agency.

The benefits-oriented model of participation invited the public to visit parks, but reserved decisions about administration to park management. Within the NPS, the view was that building a viable national park system was a job for those with the necessary training and expertise. The benefits-oriented approach served some positive functions in the early days of the NPS, when building close ties between national parks and tourism was important for the long-term political stability of the NPS and the national parks themselves. The strategy was to bring constituents into the parks: once visitors built an appreciation and love for these special places, they could presumably lobby their legislators to support the parks. But to build the tourism infrastructure, park administrators had to work closely with business interests who created the tourism facilities.

## B. Consultative Participation and the NPS

With the passage of the Administrative Procedures Act (APA) in 1946,<sup>80</sup> a new era of public interaction with government slowly unfolded. As the role of government in American life expanded in the 1930s and 1940s, administrative agencies grew into large bureaucracies. The APA required all federal agencies to solicit and consider comments from the public as part of administrative rulemaking and adjudication.<sup>81</sup> The APA also required that “every portion of every meeting of an agency shall be open to the public.”<sup>82</sup> As with other federal agencies, however, opportunities for direct public input in administrative planning of national parks came about slowly. This, in part, stemmed from other priorities that occupied NPS personnel. During the 1950s and 1960s, for example, the NPS focused on upgrading park facilities and infrastructure, through the 10-year Mission 66 program.<sup>83</sup>

In 1971, a local organization in Tennessee filed a lawsuit against the Secretary of Transportation, *Citizens to Preserve Overton Park v. Volpe*.<sup>84</sup> This suit

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79. National Wild and Scenic Rivers Act, Pub. L. No. 90-452, 82 Stat. 906 (1968) (codified as amended at 16 U.S.C. §§ 1271–1287); National Trails System Act, Pub. L. No. 90-543, 82 Stat. 919 (1968) (codified as amended at 16 U.S.C. §§ 1241–1251); see Unrau & Willis, *supra* note 75, ch.4J.

80. Administrative Procedures Act, Pub. L. No. 79-404, 60 Stat. 237 (1946) (codified as amended at 5 U.S.C. §§ 551–559).

81. 5 U.S.C. § 553(b)–(c) (2012); 5 U.S.C. § 554(b)–(c) (2012).

82. 5 U.S.C. § 552(b) (2012).

83. See FORESTA, *supra* note 43, at 52–55; KEITER, *supra* note 69, at 48; WILLIAM C. TWEED, UNCERTAIN PATH: A SEARCH FOR THE FUTURE OF THE NATIONAL PARKS 188 (2010).

84. *Citizens to Preserve Overton Park v. Volpe*, 401 U.S. 402, 402 (1971).



amplified the requirement that administrative agencies consult the public, as required in the APA. The suit involved a challenge to the construction of Interstate 40 through a city park in Memphis. The plaintiffs claimed this violated two statutes that said protecting parks took precedence over highways, except in the most unusual circumstances.<sup>85</sup> The Secretary argued the decision was within his discretion. The Supreme Court held that without an administrative record to support his decision, the Secretary's actions were arbitrary and capricious. The *Overton Park* case reined in administrators who exercised excessive discretion in decision-making, and strongly encouraged administrators to ensure greater public involvement and participation in agency decision-making, as stipulated in the APA.

The NPS has recognized its responsibility to engage the public through consultative participation, and is aware of the benefits as well as some of the drawbacks of the consultative approach.<sup>86</sup> This NPS policy statement shows the Service's commitment to consultative participation, as required in the APA:

The travel and tourism industry, recreational equipment manufacturers, environmental organizations, the visiting public and many others have a strong interest in the way the national parks are managed. They also have a strongly held belief in their right to participate in the decision-making process. This belief is supported by the Administrative Procedures Act, which requires agencies to give the public an opportunity to comment on major policy decisions that will affect them. Prudence and Departmental policy dictate that the NPS seek and consider public comment through Federal Register notices and other selective means as we adopt our Director's Orders and update NPS Management Policies, just as we routinely do with NPS regulations. However, we do not generally seek public comment on operational matters that are likely to be of no, or limited, interest to the public.<sup>87</sup>

However, a tension remained within the NPS. Agency policy stressed the need to engage the public in administrative decisions and actions. Yet, land managers generally saw themselves as agents of conservation, rather than agents of democratic governance. They often work in remote areas and carry out technical tasks, and were able to ignore rising pressure to engage the public. The public, however, was not content to participate only in park benefits. As contentious issues arose in park management, the public wanted a greater voice in shaping park policy and NPS

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85. In *Overton Park*, the Court says "Section 4(f) of the Department of Transportation Act and § 138 of the Federal Aid Highway Act are clear and specific directives. Both . . . provide that the Secretary 'shall not approve any program or project' that requires the use of any public parkland 'unless (1) there is no feasible and prudent alternative to the use of such land, and (2) such program includes all possible planning to minimize harm to such park.'" *Id.* at 411.

86. Keiter notes that one effect of the shift to a consultative approach was that the parks tried to segment their ultimate mission into nature, recreation, history, and the like, as this allowed the NPS to be more responsive to public desires. He suggests that in the General Authorities Act of 1970, Congress specifies that the National Park System is one single entity, in an effort to forestall the trend in the NPS to segment its activities. See Keiter, *supra* note 71, at 242.

87. "Things to Know" . . . about National Park Service policy and the Directives System, NAT'L PARK SERV. (Dec. 7, 2011), <http://www.nps.gov/policy/DOrders/thingstoknow.htm>.

actions. Park managers increasingly had to respond to public demands, and NPS policies aimed to ensure that managers had the means to interact with the public to hear what park users and other stakeholders said.

The NPS general policy statement demonstrates a commitment to seeking input from a wide set of constituents through consultation:

Public participation in planning and decision-making will ensure that the Service fully understands and considers the public's interests in the parks, which are part of the public's national heritage, cultural traditions, and community surroundings. The Service will actively seek out and consult with existing and potential visitors, neighbors, American Indians, other people with traditional cultural ties to park lands, scientists and scholars, concessioners, cooperating associations, gateway communities, other partners, and government agencies. The Service will work cooperatively with others to improve the condition of parks; to enhance public service; and to integrate parks into sustainable ecological, cultural, and socioeconomic systems.<sup>88</sup>

This policy statement also hints at a movement towards collaborative participation, by defining the heritage and traditions that the NPS cares for as belonging to the public, and by stating that the goal is “to integrate parks into sustainable, cultural, and socioeconomic systems.” This latter statement, in particular, recognizes that parks are a part of large landscapes, and are not disconnected from this larger context. This is a crucial step towards the integrated management of large landscapes, accomplished through partnerships, facilitation and collaboration offered by the NHAs.

The “Parks and People” approach contributed to the NPS’s evolution towards collaborative landscape management as well. As park systems grew in developing countries, governments needed to adapt their policies to a more integrative approach in response to people’s need to use land to make a living. Michael Wells and Katrina Brandon summed up the issue like this:

The conservation community has acknowledged that communities next to protected area boundaries frequently bear substantial costs as a result of lost access while receiving little in return. Local residents, who tend to be poor and receive few government services, often perceive protected areas as restricting their ability to earn a living. It is not surprising that the pressures of growing populations and unsustainable land use practices outside protected area boundaries frequently lead to illegal and destructive encroachment.<sup>89</sup>

In response to these conditions, developing countries adopted a different approach to managing parks, called Integrated Conservation and Development Projects (ICDPs).<sup>90</sup> This approach created zones emphasizing different land uses within

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88. NAT'L PARK SERV., *supra* note 21, § 2.1.3, at 22.

89. WELLS & BRANDON, *supra* note 19, at 2.

90. WELLS & BRANDON, *supra* note 19, at 25.

protected areas. Core areas protected resources by excluding people, while special use and “buffer zones” that surrounded the core areas allowed people to live and farm, while encouraging them to adopt sustainable land use practices to protect the core area. In 1971, the United Nations adopted this model and developed the biosphere reserve designation.<sup>91</sup> Biosphere reserves are zoned protected areas that are administered under UNESCO’s Man and the Biosphere (MAB) Program, which sets general administrative policies and guidelines that are then enacted on a country-by-country basis by MAB National Committees.<sup>92</sup>

The Parks and People model brought a concern for the development of people around parklands into the consciousness of park managers and policymakers. It also raised awareness of the political nature of national parks, and that parks were not disconnected from economic development.<sup>93</sup> Biosphere reserves and other ICDPs aimed to unite what had often been portrayed as contrary missions: preservation and economic development.<sup>94</sup> U.S. parks do not have “buffer zones,” per se, but management categories such as national preserves have been applied as de facto buffer zones for national parks. The parks and people model moves beyond consultative participation and builds a framework for collaborative participation in the management of large landscapes.<sup>95</sup>

As collaborative partnerships gain influence in American governance, observers suggest that citizen engagement through partnerships will reshape national park policy in the 21st century.<sup>96</sup> Moreover, this approach is not limited to the NPS; the USDA Forest Service, the U.S. Fish & Wildlife Service, and other federal and state land management agencies are revising their approaches to increase opportunities for partnerships and collaborative participation as well.

#### IV. COLLABORATIVE PARTICIPATION AND THE NATIONAL HERITAGE AREAS

In the NPS, NHAs are the best examples of collaborative participation across large landscapes. NHAs differ in several ways from traditional national parks and other units in the national park system. First, the federal government does not acquire ownership of any land or property associated with an NHA, as it does with national parks and other NPS units. The NPS may own property within an NHA,<sup>97</sup>

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91. The U.S. has a Man and the Biosphere Program committee and several designated biosphere reserves, although the zoning model of park management has not been implemented as directly in the U.S. as in other countries.

92. *MAB Governing Bodies*, UNESCO, <http://www.unesco.org/new/en/natural-sciences/environment/ecological-sciences/man-and-biosphere-programme/governing-bodies/> (last visited Nov. 8, 2015).

93. See NATIONAL PARKS AND RURAL DEVELOPMENT, *supra* note 12, at 268. Most of the chapters in this book deal specifically with the role national parks play in regional economic development.

94. WELLS & BRANDON, *supra* note 19, at 3.

95. WELLS & BRANDON, *supra* note 19, at 42.

96. Ryan L. Sharp, Min Kook Kim, Edgar Espinoza & Abril Aguirre, *The Role of Social Science Research in the National Parks: An Opportunity for True Civic Engagement* 8 PARK BREAK PERSP. 1, 2–3 (2010), available at [http://www.georgewright.org/pbp008\\_sharp.pdf](http://www.georgewright.org/pbp008_sharp.pdf).

97. National parks or other units of the national park system may exist within the boundaries of an NHA, but these are managed in the traditional manner and not through the NPS’s role as partner in the NHA.

but cannot acquire property attached to the NHA. Second, the NPS does not have authority to manage the lands or people within an NHA. Instead, the NHAs are administered by a local entity, which may be a public agency, a private commercial or non-profit organization, a university, or an entity established specifically for the purpose of managing the NHA.<sup>98</sup> The NPS is a partner along with the management entity and other local heritage organizations, such as museums, parks, interpretive centers, historic sites, and tourism providers. All work together to preserve, manage, finance, and promote historic, cultural, and natural values, as well as economic development and tourism.<sup>99</sup> As a partner, the NPS offers expertise in tourism and landscape-level planning which helps the management entities to organize and promote heritage events, venues, and tourism opportunities.<sup>100</sup> Third, NHAs are working landscapes, inhabited by people, and they encompass all the elements in the landscape: cities and towns, natural areas, watercourses, transportation corridors, infrastructure, factories, residences, schools, prisons, and all the other aspects of daily life within the area.<sup>101</sup> Fourth, Congress typically authorizes NPS involvement with NHAs for a specified period of time, often ten years.<sup>102</sup> Fifth, in contrast to the traditional model of federal designation, NHAs are initiated by local organizations. These organizations generally undergo a rigorous planning process to produce a feasibility study, and when the process is complete, they are eligible for Congressional designation as an NHA.<sup>103</sup>

### A. History of the National Heritage Areas

Congress forged the concept of NHAs in 1984, by creating a commission to manage an area designated as the Illinois and Michigan National Heritage Corridor.<sup>104</sup> Rather than assigning management responsibility over the new designation to the NPS, Congress named the Director of the NPS (or a delegate) as an ex-officio member of the nineteen-member commission.<sup>105</sup> This codified the principle that the NPS would be a partner in the administration and management of

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98. Each management entity is different; however, they commonly operate something like a regional chamber of commerce or convention and visitors' bureau.

99. *What are National Heritage Areas?*, NAT'L PARK SERV., <http://www.nps.gov/heritageareas/FAQ> (last visited Nov. 8, 2015); *What is a National Heritage Area?*, ALL. OF NAT'L HERITAGE AREAS, [http://www.nationalheritageareas.us/what\\_is\\_nha.html](http://www.nationalheritageareas.us/what_is_nha.html) (last visited Nov. 8, 2015).

100. Brenda Barrett, *National Heritage Areas: Places on the Land, Places in the Mind*, 22 GEORGE WRIGHT F. 10, 14–15 (2005).

101. NAT'L PARK SERV., HERITAGE AREAS 101: PLACE-BASED, COMMUNITY DRIVEN CONSERVATION & ECONOMIC DEVELOPMENT 1 (2012), available at [http://www.nps.gov/heritageareas/FAQ/InfoSheet\\_NHAs%20in%20brief.pdf](http://www.nps.gov/heritageareas/FAQ/InfoSheet_NHAs%20in%20brief.pdf).

102. The sunset provisions written into heritage area laws have commonly been extended by Congress, retaining a role for the NPS in facilitating the management of these sites. Many have continued to receive federal funding as well after their initial term expires and is extended.

103. *Becoming a National Heritage Area*, NAT'L PARK SERV., <http://www.nps.gov/heritageareas/become/index.htm> (last visited Nov. 8, 2015).

104. Illinois and Michigan Canal National Heritage Corridor Act of 1984, Pub. L. No. 98-398, §§ 105, 106, 98 Stat. 1456 (1984) (16 U.S.C. § 461 note).

105. § 106(a)(1), 98 Stat. at 1457.

what would come to be known as NHAs.<sup>106</sup> Acting as a collaborative partner represented a new role for the NPS. As a partner, the NPS Director had only the same powers and obligations as the other commission members.

The legislation also spelled out the duties of the NPS, through the Secretary of the Interior, in the NHA. The Secretary's duties included: (1) in consultation with the Commission, conducting an inventory of sites or structures with historical, architectural, engineering, archaeological, or geologic significance, (2) developing themes and materials to interpret the corridor's story, (3) providing technical assistance to the Commission when requested, (4) providing information to interested persons about the tax advantages of historical rehabilitation, and (5) supplying two employees to assist the Commission in carrying out its duties.<sup>107</sup> These duties established expectations of the NPS on heritage areas, which are to offer technical expertise in heritage interpretation, planning, and to provide material support for local managers.

To distinguish the NHA from a national park or other traditional NPS unit, the legislation also spells out the staff, powers, duties and limitations on the federal commission.<sup>108</sup> Congress granted the Commission the power to hold hearings, enter into cooperative agreements, establish advisory groups, and use government administrative services and mail. The Commission may not subpoena witnesses, nor can the Commission acquire real property, and if the heritage area does acquire property through a gift or by purchase from a willing seller, the Commission must convey the property to a private or public land management entity as soon as practicable, without consideration and for public purposes.<sup>109</sup>

Congress created three other national heritage corridors before the 1980s were over, fourteen more during the 1990s, and thirty-one during the 2000s.<sup>110</sup> The NHA program has proven very popular, and many other communities around the country are organizing and seeking national heritage area status.<sup>111</sup> Subsequent

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106. Other statuses identified as members of the Commission include three representatives of state and local government, one board member of a local forest preserve district, one county board member for each county within the corridor, five representatives of the interests of history, archeology, historic preservation, recreation and conservation, and five representatives of business and industry. *See* Illinois and Michigan Canal National Heritage Corridor Act of 1984, Pub. L. No. 98-398, § 106(a)–112, 98 Stat. 1457 (1984) (16 U.S.C. § 461 note).

107. § 112, 98 Stat. at 1464–65.

108. §§ 107–110, 98 Stat. at 1459–63.

109. § 108, 98 Stat. at 1459–61.

110. VINCENT & COMAY, *supra* note 7, at 1–2.

111. Proposed NHAs are sites under consideration for NHA status by Congress and the NPS. A partial list of proposed sites includes the Appalachian Forest National Heritage Area, H.R. 693, 114th Cong. (2015); Buffalo Bayou National Heritage Area, H.R. 1783, 114th Cong. (2015); Sacramento-San Joaquin Delta National Heritage Area, S. 630 and H.R. 1208, 114th Cong. (2015); Susquehanna Gateway National Heritage Area, S. 211, 114th Cong. (2015); Black Metropolis National Heritage Area, H.R. 904, 114th Cong. (2015); Finger Lakes National Heritage Area, S. 1824, 114th Cong. (2015); Santa Cruz Valley National Heritage Area, H.R. 2925, 114th Cong. (2015); Maritime Washington National Heritage Area, S. 1623 and H.R. 2833, 114th Cong. (2015); Mountains to Sound Greenway National Heritage Area, S. 1690 and H.R. 2900, 114th Cong. (2015); Naugatuck River Valley National Heritage Area, S. 2857 and H.R. 5582, 113th Cong. (2014); West Virginia National Heritage Area, S. 1641, 113th Cong. (2013); Alabama Black Belt National Heritage Area, S. 869 and H.R. 2254, 113th Cong. (2013); St. Croix National Heritage Area, H.R. 89, 113th Cong. (2013); Fox-Wisconsin Heritage Parkway National

heritage area legislation included similar provisions to the Illinois and Michigan National Heritage Corridor Act. The general format creates a commission, which prepares a management plan and designates a management entity. Legislation includes the duties of the commission, provisions prohibiting acquisition of property, establishing a sunset for the commission, a role for the NPS involvement, and federal funding for the NHA.

The purposes of the NHA, and the specified duties of the commission and management entities, along with the expectations of the NPS combine to create an approach to conservation that differs from the traditional national park model. NHAs are built on local control, partnerships, and cooperation among a variety of institutions, all features of collaborative participation.

Celebrating the 75<sup>th</sup> anniversary of the NPS in 1991 at a conference in Vail, Colorado, Brenda Barrett (who later served as the NHAs coordinator for the NPS) gave a paper praising the new direction.<sup>112</sup> She noted that the “NPS has been behind the curve in developing public involvement strategies for its parks and programs.”<sup>113</sup> Her paper explicitly countered the objections to “partnership parks” expressed by many in the NPS, including the NPS Director at the time.<sup>114</sup> Barrett characterized the new proposals as “challenging for an agency that had attempted to maintain a high degree of credibility and control over the national park system.”<sup>115</sup> Barrett’s paper showed that not everyone at the NPS bought into the agency’s new approach to full-scale collaboration and partnership-based participation, but that the NPS was nevertheless building a commitment to this new approach to landscape conservation.

The purpose of NHAs is to conserve working landscapes by protecting natural and cultural resources while encouraging tourism and sustainable economic activities. The focus is on locality, and building opportunities for sustainable community and economic development across large landscapes. The Alliance for

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Heritage Area, S. 2158, 112th Cong. (2012); Maumee Valley National Heritage Area, H.R. 6040, 111th Cong. (2010); Carolinas Revolutionary Road National Heritage Area, H.R. 6445, 111th Cong. (2010); Hawai’i Capital National Heritage Area, S. 359, 111th Cong. (2009); Ocmulgee National Heritage Corridor, H.R. 2998, 110th Cong. (2007); Chattahoochee Trace National Heritage Corridor, S. 637 and H.R. 1408, 110th Cong. (2007). *See also* NAT. PARK SERV., KENTUCKY LINCOLN NATIONAL HERITAGE AREA, KENTUCKY LINCOLN NATIONAL HERITAGE AREA FEASIBILITY STUDY (2015), *available at* <http://parkplanning.nps.gov/projectHome.cfm?parkID=483&projectID=29078>; NAT. PARK SERV., NIAGARA FALLS NATIONAL HERITAGE AREA, NIAGARA FALLS NATIONAL HERITAGE AREA DRAFT MANAGEMENT PLAN (2012), *available at* <http://parkplanning.nps.gov/document.cfm?parkID=504&projectID=31850&documentID=46548>; NAT. PARK SERV., NORTHERN NECK NATIONAL HERITAGE AREA, NORTHERN NECK NHA FEASIBILITY STUDY PRESENTATION (2010), *available at* <http://parkplanning.nps.gov/document.cfm?parkID=487&projectID=31631&documentID=34445>; *The Heritage Initiative: Many Waters, Many Stories*, NORTH WOODS AND WATERS OF THE ST. CROIX NATIONAL HERITAGE AREA, <http://www.stcroixheritage.org/> (last visited Sep. 30, 2015).

112. Brenda Barrett, *New National Parks in the 1990s: Thinning of the Blood or a Much Needed Transfusion?* (July 10, 1991) (unpublished manuscript), *available at* <http://livinglandscapeobserver.net/wp-content/uploads/2014/01/New-National-Parks-in-the-1990s.pdf>.

113. Brenda Barrett, *NHA@30, New National Parks for the 1990s: Thinning the Blood or a Much Needed Transfusion?*, LIVING LANDSCAPE OBSERVER, Jan. 30, 2014, *available at* <http://livinglandscapeobserver.net/nha30-new-national-parks-in-the-1990s-thinning-of-the-blood-or-a-much-needed-transfusion/>.

114. *Id.*

115. *Id.*

National Heritage Areas (ANHA), a private non-profit umbrella organization for NHAs, describes NHAs as follows:

In heritage areas, local communities and leaders cooperate on efforts to preserve the resources that are important to them. The partnership approach to heritage development involves collaborative planning around a theme, industry and/or geographical feature that influenced the region's culture and history. This planning strategy encourages residents, government agencies, non-profit groups and private partners to agree on and prioritize programs and projects that recognize, preserve and celebrate many of America's defining landscapes.

The heritage areas seek short and long-term solutions to their conservation and development challenges by fostering relationships among regional stakeholders and encouraging them to work collaboratively to achieve shared goals. Preserving the resources and activities in heritage areas in ways that recall the traditions that helped to shape these landscapes enhances their significance.<sup>116</sup>

NHAs are unique in the NPS in their approach to participation, building bottom up collaborative partnerships that empower local entities to frame and manage their own heritage stories.

NHAs are concentrated in the eastern states—of the 49 heritage areas, 37 are located east of the Mississippi River.<sup>117</sup> By contrast, national parks and other large conservation areas are located primarily in the western U.S. This disparity has historical roots. As the eastern states were settled, the government policy was to privatize lands, but while the western states were settled the federal government had established a policy of reserving lands for national parks and other uses.<sup>118</sup> Once the federal government began creating national parks, most of the remaining public domain land existed in the west, so public lands were a good fit for these landscapes. Heritage areas, on the other hand, incorporate private property, and thus are a better fit for conservation in the East. The National Heritage Areas Program has given the NPS an opportunity to build a more significant presence in the eastern U.S.

## **B. How Do Heritage Areas Work?**

Although each heritage area has a unique history, the general procedure for designating and managing a heritage area begins with local entities that organize to express their interest in a heritage area designation. Congress or the Secretary of the

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116. *What is a National Heritage Area?* ALL. OF NAT'L HERITAGE AREAS, [http://www.nationalheritageareas.us/what\\_is\\_nha.html](http://www.nationalheritageareas.us/what_is_nha.html).

117. The count includes the Atchafalaya NHA, which straddles the Mississippi River near Baton Rouge, Louisiana. See National Heritage Areas Act of 2006, Pub. L. No. 109-338, § 213(b), 120 Stat. 1791 (2006) (16 U.S.C. § 461 note).

118. THOMAS R. WELLOCK, PRESERVING THE NATION: THE CONSERVATION AND ENVIRONMENTAL MOVEMENTS, 1870–2000 15 (2007).

Interior can allocate funding and technical assistance to potential heritage areas to carry out a feasibility study.<sup>119</sup> Generally, the feasibility study would include cataloguing all of the nationally significant cultural, historic and natural heritage stories, sites and facilities within the study area, as well as a diverse array of potential partners.<sup>120</sup> Once a feasibility study is completed satisfactorily, the local organizers work with their representatives to craft legislation for the heritage area, which is introduced and passed by Congress. In the legislation, Congress creates a commission or a management entity, which develops a management plan for the site.<sup>121</sup> The management entity assumes responsibility for facilitating local efforts at tourism development, promotion, and preservation of local heritage resources.<sup>122</sup>

Given the diversity in the types of organizations that serve as management entities, there is no clear operating model.<sup>123</sup> Generally, though, the management entities forge partnerships with local entities that have historic, cultural, natural or touristic interest.<sup>124</sup> Some of the tasks management entities carry out include educating residents about their local heritage, developing strategies and materials to promote their region to potential tourists, conducting research on the history and culture of their region, raising and allocating funds for heritage-related development, producing resource inventories, and developing a tourism infrastructure, including signage, trails and corridors, and tourism guides.<sup>125</sup>

Heritage area managers generally emphasize that they work through partnerships, including a partnership with the NPS.<sup>126</sup> It is this emphasis on collaboration and partnerships that distinguishes the role of the NPS in heritage areas from other units the NPS manages in a more consultative fashion.<sup>127</sup>

Unlike national park units, which are typically owned by the federal government, managed by the NPS, and defined by specific boundaries, the management entities for heritage areas do not have the authority to manage everything within the NHA's boundaries. The boundaries typically are defined by counties or by corridors rather than by describing the metes and bounds that define a park's boundaries. The management entity works within the area to facilitate

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119. See, e.g., Consolidated Natural Resources Act of 2008, Pub. L. No. 110-229, §§ 481–482, 122 Stat. 827–30 (2008) (16 U.S.C. 1 note) for an example of legislation authorizing a heritage area feasibility study.

120. *National Heritage Area Feasibility Study Process*, NAT'L PARK SERV., <http://www.nps.gov/heritageareas/become/NHA%20Feasibility%20Study%20Process%20FAQ.pdf> (last visited Sept. 14, 2015); *National Heritage Area Feasibility Study Guidelines (Draft)*, NAT'L PARK SERV., <http://www.nps.gov/heritageareas/become/nhafeasguidelines.pdf> (last visited Sep. 15, 2015).

121. See, e.g., National Heritage Areas Act of 2006, Pub. L. No. 109-338, 102 Stat. 1783 (2006) for examples of legislative requirements. Section 205(a) of this act lays out the procedure for developing a management plan for the Northern Rio Grande National Heritage Area, a procedure that is very similar to legislation for other NHAs.

122. See, e.g., National Heritage Areas Act of 2006, Pub. L. No. 109-338, § 205(c), 102 Stat. 1783 (2006) for an example of typical duties of NHAs.

123. VINCENT & COMAY, *supra* note 7, at 4.

124. NAT'L PARK SERV., COMPONENTS OF A SUCCESSFUL NAT'L HERITAGE AREA MANAGEMENT PLAN 17–19. (2007), available at <http://www.nps.gov/heritageareas/toolbox/Notebook.pdf>.

125. *Id.* at 29–30; VINCENT & COMAY, *supra* note 7, at 5.

126. Barrett, *supra* note 100, at 14.

127. VINCENT & COMAY, *supra* note 7, at 3–4.



conservation and tourism among the parties that live in the region and the tourists that visit. Obviously, a lot happens in a heritage area that is outside of the management entity's control and authority. For instance, the responsibilities of the NPS in park units encompasses many basic services, including emergency medical and law enforcement. In heritage areas, these are handled by the typical municipal and county entities. Businesses, families, churches, schools, and other community organizations operate as they would anywhere, and generally only are affected by the heritage area if they form a partnership with the management entity. Many residents may not even know they live in a designated heritage area. In sum, heritage areas are not operated and managed strictly by the NPS. Rather, heritage areas involve cooperation.

### C. National Heritage Area Laws

Heritage areas encompass conservation of natural, cultural and historic resources. However, the National Heritage Areas Program in the NPS is housed in the Office of Cultural Resources, Partnerships and Science.<sup>128</sup> The legal history is rooted not only in the creation and management of natural national parks, but also the NPS's longstanding role in cultural preservation. Protection of cultural resources actually predates the creation of the NPS. For instance, national parks such as Mesa Verde were designated primarily to protect ancient cultural sites from vandals and thieves,<sup>129</sup> who fed a booming black market in cultural relics.<sup>130</sup> Ten years before the creation of the NPS, Congress passed the Antiquities Act of 1906.<sup>131</sup> While only Congress could create national parks, the Antiquities Act established the national monument designation, which a president could unilaterally designate.<sup>132</sup> The purpose of the national monuments was to protect "historic landmarks, historic and prehistoric structures, or other objects of historic or scientific interest."<sup>133</sup> Teddy Roosevelt began using the Antiquities Act shortly after it passed, designating Devils Tower, Chaco Canyon, Muir Woods, Mount Olympus, and the Grand Canyon as national monuments within two years.<sup>134</sup> Initially, national monuments were assigned to the Department of Agriculture, the Department of the Interior, or the Department of War, but eventually most of the national monuments were incorporated into the NPS.<sup>135</sup>

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128. *Cultural Resources, Partnerships and Science Directorate*, NATL. PARK SERV., [http://www.nps.gov/history/tribes/Heritage\\_Areas.htm](http://www.nps.gov/history/tribes/Heritage_Areas.htm) (last visited Oct. 27, 2015).

129. An Act Creating Mesa Verde National Park, Pub. L. No. 59-353, 34 Stat. 616 (1906) (codified as amended at 16 U.S.C. §§ 111–118). Section 2 of the enabling legislation (Section 112 in the U.S.C.) authorizes regulations that "shall provide specifically for the preservation from injury or spoliation of the ruins and other works and relics of prehistoric or primitive man within said park."

130. Richard West Sellars, *A Very Large Array: Early Federal Historic Preservation – The Antiquities Act, Mesa Verde, and the National Park Service Act*, 25 *GEORGE WRIGHT F.* 65, 66 (2008).

131. Antiquities Act of 1906, Pub. L. No. 59-209, 34 Stat. 225 (1906) (codified as amended at 16 U.S.C. §§ 431–433).

132. 34 Stat. 225 at § 2.

133. *Id.*

134. SELLARS, *supra* note 3, at 13.

135. *Id.*

The Historic Sites Act of 1935 was another precursor to the NHAs.<sup>136</sup> This law authorized the NPS to engage in activities directly related to historical preservation, such as research, archiving, restoration, and interpretation. The act also created the National Historic Site designation. The National Historic Preservation Act of 1966 expanded the federal role in cultural heritage preservation, and moved toward a collaborative partnership approach to large landscape preservation by creating the framework for the federal government to work with states, and also established a means of inventorying and interpreting cultural heritage through the National Register of Historic Places and the National Historic Landmarks.<sup>137</sup>

The trend of cultural heritage was expanded with the National Heritage Areas Program. NHAs have been created through individual statutes. Between 1984 and 1988, Congress created four heritage areas, and each had its own statute.<sup>138</sup> These sites were designed and designated as heritage corridors, demonstrating their emphasis on tourism development as cultural tourists commonly move through corridors from site to site. In 1994, Congress created two more sites with one piece of legislation, the Quinebaug and Shetucket Rivers Valley National Heritage Corridor and the Cane River National Heritage Area, the first site to be designated as an “area” rather than a “corridor.”<sup>139</sup> Since 1994, Congress has tended to create several heritage areas in the same legislation, including as part of omnibus land acts.<sup>140</sup>

Heritage area enabling legislation typically presents Congressional findings, establishes a commission to administer the heritage area, identifies the “boundaries” of the heritage area (usually simply identifying the corridor or the counties where the commission operates), specifies the focus of the heritage area, authorizes the commission to carry out specific activities and prohibits specific

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136. Historic Sites Act, Pub. L. No. 74-292, 49 Stat. 666 (1935) (codified as amended at 16 U.S.C. §§ 461-467).

137. National Historic Preservation Act of 1966, Pub. L. No. 89-665, 80 Stat. 915 (1966) (codified as amended at 16 U.S.C. § 470).

138. Illinois and Michigan Canal National Heritage Corridor, Pub. L. No. 98-398, 98 Stat. 1456 (1984); John H. Chafee Blackstone River Valley National Heritage Corridor, Pub. L. No. 99-647, 100 Stat. 3625 (1986); Delaware and Lehigh National Heritage Corridor, Pub. L. No. 100-692, 102 Stat. 4552 (1988); Southwestern Pennsylvania Industrial Heritage Route, Pub., L. No. 100-698, 102 Stat. 4618 (1988) (Later renamed the Path of Progress National Heritage Tour Route), *available at* <http://www.recreation.gov/recreationalAreaDetails.do?contractCode=NRSO&recAreaId=12733&agencyCode=70904>.

139. Quinebaug and Shetucket Rivers Valley National Heritage Corridor, Pub. L. No. 103-449, §§ 101-110, 108 Stat. 4752 (1994) (16 U.S.C. § 461 note); Cane River National Heritage Area, Pub. L. No. 103-449, §§ 401-406, 108 Stat. 4752 (1994). In 2014, the Quinebaug and Shetucket Rivers Valley NHC was renamed The Last Green Valley National Heritage Corridor, Carl Levin and Howard P. “Buck” McKeon National Defense Authorization Act for Fiscal Year 2015, Pub. L. No. 113-291, 128 Stat. 3804-05 (2014).

140. For example, in 1996, Congress created eight heritage areas with one law, the Omnibus Parks and Public Lands Management Act of 1996, Pub. L. No. 104-333, 110 Stat. 4093 (1996) (16 U.S.C. § 461 note). In 2006, Congress created 10 new NHAs in the National Heritage Areas Act of 2006, Pub. L. No. 109-338, 120 Stat. 1783 (2006) (16 U.S.C. § 461 note). And in 2009, Congress designated eight more heritage areas in the Omnibus Public Land Management Act of 2009, Pub. L. No. 111-11, 123 Stat. 991 (2009) (16 U.S.C. § 461 note).

activities, addresses concerns specific to each site, and prohibits acquisition of property and other actions by the commission.

#### **D. National Heritage Areas and the NPS**

The NPS maintains a commitment to working with partners. According to NPS policy, “in the spirit of partnership, the [NPS] will also seek opportunities for cooperative management agreements with state or local agencies that will allow for more effective and efficient management of the parks, as authorized by section 802(a) of the National Parks Omnibus Management Act of 1998 (16 U.S.C. 1a–2(1)).”<sup>141</sup>

Historically, the NPS has contracted with many entities to assist in the management of national parks and other units. Concessionaires on national parks provide many visitor services, including lodging, food, transportation, and guide services.<sup>142</sup> Cooperating organizations manage bookstores in visitor’s centers and provide volunteers to staff public information sites.<sup>143</sup> Volunteers in Parks supply labor to assist with maintenance, interpretation, and operations.<sup>144</sup> None of these, however, operated as true partnerships, as the NPS always maintained authority and control over the private entities working in parks. In NHAs, the NPS is not the landowner nor the management entity; rather, the NPS serves as a partner and resource for the local commissioners and managers who administer the heritage area.

At their best, NHAs empower local people and organizations to take control of their own heritage story. NHAs build pride in local heritage and keep heritage stories alive. NHAs encourage parents to pass their stories on to their children not solely for the sake of tradition but also for the economic well-being of the community. Moreover, NHAs act as mediating organizations that accomplish national goals and priorities without the sometimes heavy-handed and homogenous approach that federal legislation and administration can invoke. Instead, heritage areas represent the value of diversity and aim to stitch together the cultural fabric of the nation.

#### **V. CHALLENGES IN NATIONAL HERITAGE AREA ADMINISTRATION**

The NHAs offer a conservation model for the twenty-first century. The program faces several challenges, however, and NPS administrators must make some decisions about how to manage NHAs going forward. I briefly review four salient issues currently facing the NHA program.

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141. NAT’L PARK SERV., *supra* note 21, § 1.10, at 18.

142. *NPS Commercial Services*, NAT’L PARK SERV., <http://www.nps.gov/commercialservices/> (last visited Nov. 1, 2015).

143. *National Park Cooperating Associations*, NAT’L PARK SERV., <http://www.nps.gov/hfc/cfm/coop-assn.cfm> (last visited Nov. 1, 2015).

144. *Volunteers-in-Parks*, NAT’L PARK SERV., <http://www.nps.gov/getinvolved/volunteer.htm> (last visited Nov. 1, 2015).

### A. Organic Legislation

An on-going debate in heritage areas is whether an organic act is necessary to standardize policies and procedures for all heritage areas.<sup>145</sup> To date, while various bills proposing a heritage areas organic act have been introduced in Congress dating back over twenty years, no bill has yet passed both houses of Congress.<sup>146</sup> Heritage area advocates have been promoting this legislation as a means of standardizing expectations and operations on heritage areas.<sup>147</sup> Advantages of an organic law are, first, it would stabilize and standardize funding for heritage areas, making it easier for management entities to plan; second, it would establish criteria and a procedure for designating new heritage areas, reducing what some perceive as a haphazard process; third, it would standardize expectations and procedures for feasibility studies, management plans, evaluations, and other documentation that the commission or management entity would produce; and fourth, an organic act would signal to communities interested in national heritage area designation the expectations and characteristics for achieving this status. An organic law might also create NHAs as permanent entities, and perhaps as units of the National Park System, although there appears to be substantial opposition to these possibilities.

A clear disadvantage of a heritage areas organic law is that it would centralize authority over the individual heritage areas. Most of the laws creating individual heritage areas contain similar language. However, creating heritage areas piece-by-piece, rather than as part of a system, allows for more autonomy, flexibility, and creates the opportunity to craft each law to a heritage area's individual circumstances and needs.<sup>148</sup> One of the features of collaborative partnership style participation is decentralized decision-making, and individual laws for each heritage area maintains a structure that facilitates decentralization.

### B. The Property Rights Challenge

As with most any government action involving land use regulation, NHAs have provoked opposition from advocates of private property rights.<sup>149</sup> Property rights advocates generally do not oppose heritage, sustainability, cultural preservation, tourism, or other concepts associated with heritage areas, per se.

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145. CAROL HARDY VINCENT & LAURA B. COMAY, CONG. RESEARCH SERV., RL33462, HERITAGE AREAS: BACKGROUND, PROPOSALS, AND CURRENT ISSUES 10–13 (2014).

146. The most recent proposed organic legislation for NHAs is H.R. 581, 114th Cong. (2015). Previous bills include H.R. 445, 113th Cong. (2013); H.R. 4099, 112th Cong. (2012); S. 278, 110th Cong. (2007); H.R. 6287, 109th Cong. (2006); S. 243, 109th Cong. (2005); H.R. 760, 109th Cong. (2005); S. 2543, 108th Cong. (2004); H.R. 1427, 108th Cong. (2003); H.R. 2388, 107th Cong. (2001); H.R. 2532, 106th Cong. (1999); S. 1110, 104th Cong. (1995).

147. The George W. Bush Administration was generally supportive of NHAs, but advocated for a systematic organic act for heritage areas, and recommended deferring designation of specific areas until such legislation was passed. VINCENT & COMAY, *supra* note 7, at 9. The Obama Administration has supported comprehensive and systematic organic legislation for NHAs as well. VINCENT & COMAY, *supra* note 145, at 12.

148. VINCENT & COMAY, *supra* note 145, at 3.

149. VINCENT & COMAY, *supra* note 7, at 6.

Rather, they question the right of the government to control land,<sup>150</sup> and particularly to impose restrictions and control decisions on privately owned lands. Heritage area legislation suggests that Congress has no intention of authorizing heritage area commissions to interfere with private property rights, and has codified language to that effect in heritage area statutes.<sup>151</sup> Heritage area proponents commonly point to such passages in legislation to refute the property rights challenge.

Property rights advocates insist that the “devil is in the details,” however, and oppose the administrative actions to implement heritage area legislation and plans.<sup>152</sup> One criticism is that heritage areas create winners and losers within the landscapes they manage, since they bring in and distribute money to organizations and individuals engaged in heritage-related activities, but not to others engaged in non-heritage endeavors.<sup>153</sup> Likewise, property rights advocates claim heritage areas use restrictive zoning practices (prohibited in NHA legislation) that limit what property owners can do with their property.<sup>154</sup> Other critiques are that NHAs are expensive to manage, and they divert federal funds away from more pressing NPS needs.<sup>155</sup>

Heritage areas generally make a strong point to respect private property rights, and the commissions and management entities are only authorized to carry out a limited set of activities. And Congress looks to ensure that a region strongly supports a heritage area before authorizing one. These measures should be enough

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150. Several bills have been introduced into Congress to prohibit allocating any funds to NHAs. For example, in 2014, Representative Matt Salmon (R–Arizona), introduced H.R. 5371, 113th Cong. (2014), which succinctly stated “Notwithstanding any other provision of law, no Federal funds may be used and no Federal technical assistance may be provided for the following: (1) The Heritage Partnership Program, (2) Any National Heritage Area.” In 2011, Representative Tim Huelskamp (R–Kansas) introduced legislation into the House of Representatives which would amend each statute creating a national heritage area to include the words “No Federal funds may be used to carry out this title,” H.R. 3716, 112th Cong. (2011).

151. For example, Section 809 of the Consolidated Appropriations Act of 2001, Pub. L. No. 106-554, 114 Stat. 2763A-295 (2000), creating the Erie Canal National Heritage Corridor, says “(a) Authority of Governments – Nothing in this title shall be construed to modify, enlarge, or diminish any authority of the Federal, State, or local governments to regulate any use of land as provided for by law or regulation. (b) Zoning of Land – Nothing in this title shall be construed to grant powers of zoning or land use to the Commission. (c) Local Authority and Private Property – Nothing in this title shall be construed to affect or authorize the Commission to interfere with (1) the rights of any person with respect to private property, (2) any local zoning ordinance or land use plan of the State of New York or political subdivision thereof, or (3) any State or local canal-related development plans including but not limited to the Canal Recreationway Plan and the Canal Revitalization Program.” In addition, the commissions and management entities are prohibited from acquiring property within the heritage area, except by gift or purchase from a willing seller, but any property the commission or management entity does acquire must be conveyed as soon as practicable to a public or private land management agency with the stipulation that the property be used for public purposes. *See, e.g., Illinois and Michigan Canal National Heritage Corridor Act of 1984*, Pub. L. No. 98-398, § 108(g), 98 Stat. 1460 (1984) (16 U.S.C. § 461 note).

152. Tom DeWeese, *National Heritage Areas: The Land Grabs Continue*, THE NEW AMERICAN (Oct. 17, 2012), <http://www.thenewamerican.com/reviews/opinion/item/13248-national-heritage-areas-the-land-grabs-continue> (last visited Sep. 13, 2015).

153. *Id.*

154. Cheryl Chumley & Ronald D. Utt, *National Heritage Areas: Costly Economic Development Schemes that Threaten Property Rights*, HERITAGE FOUNDATION (2007).

155. *Id.* at 3.

to quell property rights proponents from strong criticisms of the National Heritage Areas Program.

### C. Participation or Outsourcing?

By engaging various groups, is the government facilitating participation or outsourcing vital government functions and public service to private entities?<sup>156</sup> This is, to some extent, a matter of perspective. Under NPS policy, also stipulated in the enabling statutes for some NHAs, NHAs are not units of the National Park System. This relieves the NPS of many of the responsibilities of land ownership, while offering additional assurances that private property within the heritage areas will not be violated by heritage area activities. Ensuring NHAs are not units of the NPS also reinforces the basic premise of NHAs, which is that they operate through “bottom-up” initiatives, rather than “top-down” command-and-control management.<sup>157</sup> There have been efforts to convert NHAs into units of the NPS.<sup>158</sup> While this might stabilize heritage area management and funding, it could also compromise the autonomy and local control that local heritage area management entities currently enjoy.

Some commentators note that business has been an important constituent and concern for national park administration from the beginning.<sup>159</sup> Beginning with Yellowstone, the national parks represented a whole new way to promote tourism as an engine of economic development in the West. Bringing in tourism would require infrastructure, which would provide jobs, and would entail significant investment by the government, the landowner of the parks. This would entrench the parks in the bureaucratic structure and ensure their survival as an institution. It also would establish a businesslike approach to park management, “emphasizing the number of miles of roads and trails constructed, the number of hotel rooms and campsites available, the number of visitors each year, and the need for continued tourism development.”<sup>160</sup>

A longstanding principle of American democracy is that the federal government should support rather than supplant private enterprise. By contracting with businesses in NPS units and partnering with businesses in heritage areas, the NPS may be engaged in a form of outsourcing by transferring responsibilities to private entities. But this is the essence of the role the NPS plays as administrator of NPS units and as a partner in collaborative participation. As a partner in national heritage areas, the NPS takes on additional responsibilities to carry out its administrative functions as a facilitator rather than overseer. Congress has set boundaries in NHA legislation, and NPS personnel working in national heritage areas must be cognizant of their roles to avoid the appearance of heavy-handed federal management. It is especially important that NPS personnel working at NPS

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156. LIGHT, *supra* note 34, at 7.

157. Barrett, *supra* note 100, at 22.

158. Brenda Barrett, *The Legislative Score Card: National Heritage Areas June 2013*, LIVING LANDSCAPE OBSERVER, <http://livinglandscapeobserver.net/the-legislative-score-card-national-heritage-areas-june-2013/> (last visited Sep. 15, 2015).

159. SELLARS, *supra* note 3, at 10.

160. *Id.* at 10–11.

units located within heritage areas bear this in mind as they interact with the public beyond the boundaries of their protected area.

#### D. Bureaucratic Inertia

The commissions created to administer NHAs, as well as the management entities, tend to exhibit characteristics of “bureaucratic inertia”: once the formal organization is created, it tends to persist, as a lot of people develop a stake in the organization’s existence.<sup>161</sup> Almost all of the legislation designating heritage areas specifies a “sunset” for these commissions, funding or assistance, usually between 5 and 15 years.<sup>162</sup> Yet, these commissions tend to persist even after their original term expires, as a result of continued federal support and new legislation to reauthorize them.<sup>163</sup> Reauthorization can be accomplished with a short sentence modifying the language in the original enabling legislation to extend the date at which the commission or funding expires. Efforts to convert heritage areas into units of the NPS also form part of a strategy to avoid renewal each decade.

If the reason for sunset laws is to encourage local entities to take over management and operations of heritage areas fully, then extending NPS involvement for too long undermines the goal. Extended federal funding also employs resources

161. WEBER, *supra* note 25, at 987. In his early-twentieth century studies of bureaucratic organizations, Max Weber described the phenomenon of bureaucratic inertia.

162. See, e.g., Illinois & Michigan Canal National Heritage Corridor Act of 1984, Pub. L. No. 98-398, § 111, 98 Stat. 1463 (1984) (16 U.S.C. § 461 note); An Act to Establish the Blackstone River Valley National Heritage Corridor in Massachusetts and Rhode Island, Pub. L. No. 99-647, § 7, 100 Stat. 3630 (1986) (16 U.S.C. § 461 note); Delaware and Lehigh Navigation Canal National Heritage Corridor Act of 1988, Pub. L. No. 100-692, § 9, 102 Stat. 4557 (1988) (16 U.S.C. § 461 note); An Act to Establish in the Department of the Interior the Southwestern Pennsylvania Heritage Preservation Commission, Pub. L. No. 100-698, § 104(e), 102 Stat. 4622 (1988); Cane River Creole National Historic Park and National Heritage Area Act, Pub. L. No. 103-449, §404, 108 Stat. 4760 (1994); Cache La Poudre River Corridor Act, Pub. L. No. 104-323 §§ 109, 113, 110 Stat. 3889 (1996) (16 U.S.C. § 461 note); Omnibus Parks and Public Lands Management Act of 1996, Pub. L. No. 104-333 Div. II, §§ 107, 208, 310, 408, 507, 607, 707, 811 & 910, 110 Stat. 4245 (1996) (16 U.S.C. § 461 note); Automobile National Heritage Area Act, Pub. L. No. 105-355, § 109, 112 Stat. 3252 (1998) (16 U.S.C. § 461 note); An Act to Designate the Lackawanna Valley and the Schuylkill River National Heritage Areas, Pub. L. No. 106-278, §§ 108, 209, 114 Stat. 814 (2000) (16 U.S.C. § 461 note); Wheeling National Heritage Area Act of 2000, Pub. L. No. 106-291, § 157(i), 114 Stat. 963 (2000) (16 U.S.C. § 461 note); Yuma Crossing National Heritage Area Act of 2000, Pub. L. No. 106-319, § 7, 114 Stat. 1284 (2000) (16 U.S.C. § 461 note); Consolidated Appropriations Act of 2001, Pub. L. No. 106-554, § 803(j), 114 Stat. 2763 (2000); Blue Ridge National Heritage Area Act of 2003, Pub. L. No. 108-108, § 140(j), 117 Stat. 1274 (2003) (16 U.S.C. § 461 note); Consolidated Appropriations Act of 2005, Pub. L. No. 108-447, §§ 512, 608, 118 Stat. 2809 (2004) (16 U.S.C. § 461 note); National Heritage Areas Act of 2006, Pub. L. No. 109-338, §§ 208, 221, 240, 260, 269, 280B, 289, 291J, 295L, & 297H, 120 Stat. 1783 (2006) (16 U.S.C. § 461 note); Consolidated Natural Resources Act of 2008, Pub. L. No. 110-229, §§ 411, 432, & 451, 122 Stat. 754 (2008) (16 U.S.C. 1 note); Omnibus Public Land Management Act of 2009, Pub. L. No. 111-11, §§ 8001(i), 8002(i), 8003(i), 8004(i), 8005(i), 8006(j), 8007(i), 8008(i), & 8009(i), 123 Stat. 991 (2009) (16 U.S.C. § 461 note). The original enabling legislation for two NHAs does not include sunset provisions: The Quinebaug and Shetucket Rivers Valley National Heritage Corridor, Pub. L. No. 103-449, §§ 101–110, 109 Stat. 4752 (1994) (16 U.S.C. § 461 note), and the Mississippi Gulf Coast National Heritage Area, Pub. L. No. 108-447, §§ 701–709, 118 Stat. 3374 (2004) (16 U.S.C. § 461 note).

163. See, e.g., Omnibus Parks and Public Lands Management Act of 1996, Pub. L. No. 104-333 Div. I, § 901(d), 110 Stat. 4202 (1996) (16 U.S.C. § 461 note), which extends the term of the commission managing the Blackstone River Valley National Heritage Area, originally created in 1986.

that may go to funding new NHAs. The federal government assists with start-up costs and with expertise and technical assistance from the NPS, but the statutes creating heritage areas are carefully crafted to prevent long-term federal involvement. However, senators from states with heritage areas continue to support reauthorization bills.<sup>164</sup>

If the NPS functions as a partner in heritage areas, however, long-term involvement may serve the interests of both the government and the communities. To the extent that heritage areas build positive ties between the federal government and local entities, heritage areas may serve as valuable mediating organizations and political liaisons.<sup>165</sup> Such organizations can serve crucial functions in keeping the people and government connected. This may be sufficient justification to maintain a role for the NPS in heritage areas and to continue extending federal funding to NHAs through the NPS. With this goal, maintaining ten-year sunset laws that can be extended for an additional ten years would give Congress the ability to review each individual heritage area, its progress and relationship with the NPS and other partners, before allocating additional federal funding to the site. Heritage area management entities that have established their own funding mechanisms, staff, strong partnerships, and technical expertise may no longer need to partner with the NPS, or at least may no longer need federal funding channeled through the NPS. This corresponds with a general goal for all community development projects, eventual self-sufficiency.

## VI. CONCLUSION

Over the NPS's first 100 years, the agency has followed a trend away from top-down management and has incorporated more participatory approaches into its management strategies. The NPS has not always been a leader in championing public participation, but with NHAs the agency is setting a new standard of collaborative, cross boundary large landscape conservation and sustainable development. As expert-driven command-and-control government practices lose favor, participatory approaches that give stakeholders an opportunity to shape the institutions in which they hold an interest are emerging as a twenty-first century approach to administration in land use management. Large landscape approaches, which emphasize collaboration, partnerships, and government as a facilitator of collective actions rather than the decision-maker and implementer, have generated substantial interest. The National Heritage Areas Program has been a particularly popular collaborative land-management program, especially in the Eastern U.S.

NHAs represent a logical next step in the trend towards greater participation, which has been evident in the history of the NPS. The NHA program represents a significant shift in operations and management approaches. Yet, it offers the NPS a means of extending its limited resources to carry out its mission of safeguarding heritage preservation across large landscapes, including those with significant private property interests, while also offering enjoyable and educational experiences for visitors. NHAs pose little threat to existing park units, which run

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164. Barrett, *supra* note 158, at 1.

165. PETER L. BERGER & RICHARD JOHN NEUHAUS, TO EMPOWER PEOPLE: THE ROLE OF MEDIATING ORGANIZATIONS IN PUBLIC POLICY 2 (1977).



their own operations and collaborate with the NHA as a partner. And most importantly, NHAs offer communities the ability to foster economic development through collaborative partnerships with the NPS to cultivate and promote their own heritage stories.